

1 item =
801.2

Verne, B. Michael

From: [REDACTED]
Sent: Friday, March 31, 2006 2:01 PM
To: Verne, B. Michael
Cc: Ovuka, Nancy M.
Subject: RE: HSR Question

As a follow up to the below questions, the two companies that filed with respect to Merger 1 used different years for the 5(c) information. One used 2004 revenues and one used 2005 revenues. For purposes of the "pro forma" combined filing for Merger 2, must all of the revenues be from the same year or can some or the revenues be listed as 2005 and some as 2004 (assuming they are noted as such)? If they must be the same year, does it make a difference if we go with a combined 2004 or a combined 2005? Let me know. Again, many thanks.

USE DIFFERENT
YEARS / FOOTNOTES
Blueshell
3/31/06

[REDACTED]

-----Original Message-----
From: Verne, B. Michael [mailto:MVERNE@ftc.gov]

Sent: Friday, March 24, 2006 8:15 AM
To: [REDACTED]
Cc: Ovuka, Nancy M.
Subject: RE: HSR Question

Option A is the correct one.

-----Original Message-----
From: [REDACTED]

Sent: Thursday, March 23, 2006 7:27 PM
To: Verne, B. Michael
Cc: Ovuka, Nancy M.
Subject: HSR Question

We have a situation where two companies are contemplating a merger ("Merger 1") and that transaction has already been granted HSR approval. Those two companies now expect to acquire a third company via merger ("Merger 2"), with such transaction to close immediately after Merger 1 is effected. Merger 2 will require a filing under the HSR Act. The question is who needs to file:

1. Option A: The expected UPE of the ultimate survivor of Merger 1 files a "pro forma" filing containing all relevant information of the two companies that are part of Merger 1. Since at the time of Merger 2, there will only be one combined company acquiring via merger the third company, a single filing is appropriate.

2. Option B: Each of the two pre-Merger 1 companies file separately for the acquisition that will occur under Merger 2.

Let me know your thoughts. Thank you.



OPTION A IS
CONCERNING.
N. OVUKA CONCURS
B. [Signature]
3/31/06

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