

CONTINUUM

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From: [REDACTED]
Sent: Thursday, April 13, 2006 3:40 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Reportability Question

Mike,

We had a question regarding reportability of transient a intermediary.

In a multi-step transaction under a single purchase agreement, Corp. A (a \$113.4 + person) will acquire 100% of the non-corporate interests of B sub from B (a \$11.3 person but not a \$113.4 million person) for greater than \$56.7 million. Under the same purchase agreement, A will immediately sell B sub's non-corporate interests to C in exchange for C's non-voting securities. C is its own UPE and has assets greater than \$11.3 million but less than \$113.4 million. Thus, a direct transaction between C and B would not meet the size-of-the person threshold and not be reportable. A serves as the intermediary for the transaction for tax reasons and SEC regulations, which disallow A from having a controlling interest in C or B sub.

Would FTC informal int # 48 allow A to avoid reporting either or both the A-B transaction or the A-C transaction as a transient intermediary or does A really have to file twice to end up with only non-voting?

If no, would the answer change if the purchase agreement specifically conditioned A's acquisition of B sub's non-corporate interests on C's acquisition of B sub's noncorporate interests?

Thanks for your help. Let me know if you require any clarification.



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Bucher
4/13/06

You can subsume the A-B transaction in the reportable A-C transaction under the continuum theory as long as the two agreements are conditioned on one another and will occur contemporaneously. So only one filing