

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, May 01, 2007 4:48 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: FW: HSR Filing Question

Hi, Mike -
Hope you're well. I am hoping to get your thoughts on the following transaction:

A financial investor (the "Investor") is making a \$55 million investment in a business in exchange for a series of securities that confer 32% of the voting power of the post-closing entity. The target business is currently held in three corporations, the ultimate parent entity of which is an individual (the "Founder"). Investor is not currently a shareholder of any of the companies. For purposes of this question, assume that the size of parties test is met by Investor and Founder.

To effect this transaction and combine the three target businesses under one corporate parent company, the parties have proposed the following transaction structure:

Step 1: Investor forms Holdco (a corporation) and wholly-owned subsidiary, Mergerco, and invests \$55 million in Holdco in exchange for the securities to which it is entitled in the transaction.

Step 2: Holdco purchases the common stock of two of the corporations from Founder in exchange for some of the contributed cash and Holdco voting stock. At closing of this step, Holdco will likely be controlled by Founder though it is possible that Investor will continue to control Holdco.

Step 3: Mergerco merges with and into the third corporation, and the stockholders of the third corporation (including the Founder) receive the balance of cash and Holdco voting stock in exchange for their shares. At this point Holdco will either be controlled by Founder or be its own ultimate parent entity.

After the completion of these steps, the three corporations will be wholly-owned subsidiaries of Holdco. Investor will own 32% of the voting securities of Holdco, Founder may own more, but will likely own less than 50% of the voting securities of Holdco (based upon the outcome of cash/stock elections that other shareholders may make) and the remaining former stockholders of the target business will own the remaining voting stock.

It appears to me that an HSR filing is not required based on these facts. Please let me know if you disagree.

Thanks as always!
[REDACTED]

IRS Circular 230 Notice (R&G)

Probably the appropriate way to look at this is as a formation of Holdco, with Investor, Founder and other shareholders contributing either cash or shares of target to the formation, because Holdco is being created solely for the purpose of effecting this transaction. It doesn't look like Investor or any of the other shareholders will hold voting securities of Holdco valued in excess of \$59.8 MM. Founder may, but his acquisition of Holdco shares would be exempt under 802.4 because he can exclude the value of the target shares he is contributing from the limitation on non-exempt assets.


5/2/07