

Verne, B. Michael

From: [REDACTED]
Sent: Monday, May 21, 2007 12:12 AM
To: Verne, B. Michael
Subject: HSR Advice

Mike,

Hope this note finds you well. I tried unsuccessfully to reach you on Friday and am traveling today so thought e-mail may be the best way to facilitate discussion regarding an HSR issue that is of immediate importance to one of our clients. The transaction involves a number of unique components. The fact pattern and issues on which we seek confirmation are outlined below.

Company A (a US issuer) and Company B (a foreign issuer) presently have a number of corporate relationships through various shareholdings and other joint ventures. The two companies are contemplating a number of transactions in the near future that will change the current shareholding/joint venture status.

Company A currently holds an interest in Company B valued less than \$59.8 million and less than 25%. Company A and Company B also are partners in USJV, a partnership in which Company A currently holds a 70% interest and Company B holds a 30% interest. The NPV of the entire JV is approximately \$96 million

Company A plans to acquire shares in Company B that will increase the holdings above 25% and valued in excess of \$59.8 million (Transaction 1). At or around the same time, Company B will acquire a 51% controlling interest in USJV and Company B will become the minority holder (Transaction 2). The NPV of Company B's 51% holding in USJV is approximately \$49 million.

Company B has no direct sales into the US, although USJV does have sales in the US valued at approximately \$66 million. The parties are still negotiating and have not at all decided when each of the various transactions, including the two discussed in this email, will take place. One may be before the other, or they could occur simultaneously. In any event, we are assessing whether HSR will apply to both or either in any set of circumstances.

The transaction involving the acquisition of additional partnership interests in USJV by Company B appears potentially reportable because Company B will acquire control of a non-corporate interest. However, the FMV of the 51% interest that Company B will hold in USJV is approximately \$49 million. Regardless of the timing or order of the transactions, this transaction appears not HSR reportable because it is below the minimum HSR threshold.

The transaction involving the acquisition of a 30% interest in Company B by Company A appears that it may be reportable in some, or perhaps all, of the potential fact patterns.

If Transaction 1 occurs first we conclude that it is exempt under 802.51, as Company B has no direct sales into the US. If Transaction 2 occurs a few weeks later, do the aggregation rules apply to Transaction 2 and retrospectively cause Company B to control the USJV and the sales into the US so that Transaction 1 must then be notified? *AGREE*

If Transaction 1 and Transaction 2 occur simultaneously, does Company A lose the 802.51 exemption because at the time of closing Company B controls USJV, which has sales that exceed

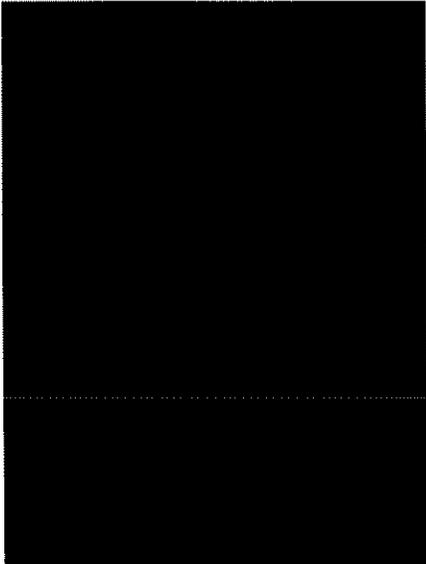
* \$59.8 million?

If Transaction 2 occurs a few weeks or even a month prior to Transaction 1 it seems that Company B will control USJV and the associated US sales at the time that Transaction 1 takes place so that Transaction 1 would not qualify for the 802.51 exemption.

— AGNEL

Please let me know your advice regarding this hypothetical or if you require any further information to complete the analysis.

Many thanks and best regards,



B. Michaelson
5/22/07

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