

802.30  
802.50**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Wednesday, October 15, 2008 8:01 AM  
**To:** Verne, B. Michael  
**Subject:** HSR Issuer re Joint Ventyre

Mike, we wanted to get your take on the following analysis with respect to an existing joint venture arrangement.

Company A (a non-US entity) and Company B (a US entity) have a non-US joint venture. All of the assets of the JV are outside the United States. A holds 50.1% and B holds 49.9% of the JV. The output of the JV is sold (pursuant to a percentage determined under the JV documents) to each of A and B where title passes to each of A and B outside of the US. Each of A and B delivers the output produced by the JV to facilities outside the US for further processing and/or inclusion in integrated products (either directly or through subcontracts); the integrated products are, in turn, sold around the world, including in the US. Neither JV party has any control over the JV output/products of the other JV party once the output is sold by the JV.

A and B want to reallocate the output of the JV, which will be accomplished by A purchasing certain equipment used by the JV. There will be no change in the respective percentage ownership of A and B in the JV. The equipment to be purchased by A is either (a) owned by the JV or other entities controlled by A or (b) leased by the JV or other entities controlled by A from third parties (banks holding title to the equipment).

We believe that no HSR filing is required based on the analysis presented below.

1. With respect to the purchase of equipment that is owned by the JV or other entities controlled by A, this purchase is exempt from HSR reporting requirements under 802.30 as an intra-person transaction.
2. Even if the intra-company exemption did not apply, any US sales by B or entities controlled by B of the JV output after it was further processed and/or included in integrated products represent an insufficient nexus between the equipment to be acquired and the United States to be deemed a sale "into the US". Thus, the acquisition of this equipment would not be subject to HSR reporting pursuant to 802.50.
3. With respect to the leased equipment (which may be either acquired by A or an entity controlled by A or subject to a new lease entered onto by A or another entity controlled by A):
  - 3.1 It is likely that this equipment is leased pursuant to a long term lease where beneficial ownership is with the JV (or another entity controlled by A). If that fact is correct, the acquisition of such leased equipment would be deemed an asset already owned (for purposes of the HSR analysis) by A and the acquisition of the leased equipment would be exempt under 802.30.
  - 3.2 If the leased equipment is not deemed an asset controlled by A, entering into a new lease (assuming on the same terms as the existing lease) or transferring the lease to another entity would not be an HSR reportable asset acquisition as beneficial ownership of the equipment would not be transferred.
  - 3.3 If A enters into a new lease that is deemed an asset acquisition or acquires the leased equipment, the acquisition of such equipment would not be reportable for the reason noted in 2 above, that is, there are "US sales" associated with such leased equipment.

We would appreciate your view on these facts and analysis.

AGREE - NOTHING  
REPORTABLE[Signature]  
10/15/08

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