

Verne, B. Michael

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From: [Redacted]
Sent: Wednesday, November 12, 2008 11:20 AM
To: Verne, B. Michael
Subject: HSR Question

Mike,

I'm writing to get your view on the HSR treatment of the following transaction:

Four non-U.S. individuals each own 25% of company X, a non-U.S. corporation with less than \$63.1m million in assets located in the U.S. and less than \$63.1 million in sales in or into the U.S.

Y is a non-U.S. corporation having U.S. assets exceeding \$63.1 million. Its non-U.S. indirect subsidiary YSub will "merge" with X pursuant to a foreign statutory merger process whereby X will survive as a wholly owned subsidiary of YSub. As a result of the merger, the four individuals will each receive 12.5% of a newly-formed non-U.S. holding company ("Holdco") that will be the indirect parent of Ysub. Y will hold the remaining 50% of Holdco.

Thereafter, for reasons independent of HSR (including tax), the four individuals will each contribute their 12.5% of Holdco to a newly-formed non-U.S. joint venture ("Z"), which will thereby hold 50% of Holdco.

It seems to me that there would be no HSR filing required for these transactions because (i) Y's acquisition of X is exempt because X doesn't have sufficient U.S. sales or assets; (ii) the four non-U.S. individuals are acquiring non-controlling interests in Z (also non-U.S.); and (iii) a new JV (Z) does not make an HSR filing in connection with the assets or voting securities contributed to it in its formation, even if those contributions will give it joint control of another company (Holdco).

Can you confirm?

Thanks very much,

[Redacted Signature]

AGREE
BM
11/12/08

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