

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, September 27, 2012 3:37 PM
To: Verne, B. Michael
Cc: Walsh, Kathryn
Subject: HSR question

Mike – Hope all is well.

Quick question: Assume that three separate holding companies that are not under common control, as control is defined in the HSR Rules, each hold 33.3% of the outstanding voting securities of [REDACTED]. Purchaser will acquire 100% of the outstanding voting securities of each holding company for \$40 million. The acquisitions of the voting securities of each holding company is not HSR reportable because the HSR thresholds are not met. Nor are the indirect acquisitions of 33.3% of [REDACTED] reportable as secondary acquisitions. But, the end result is that Purchaser will own 100% of the voting securities of [REDACTED].

This is strange but the indirect acquisition of control of [REDACTED] does not appear to be reportable under the HSR Rules. Am I missing something? Do you agree?

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I'm assuming that the three acquisitions are contingent on one another. 801.13 would require you to aggregate the three secondary acquisitions of 33.3%. Arguably, you could stop aggregating at 66.6% when you get control, but we have consistently said that when you have multiple acquisitions that are contingent on one another, you need to look through to the underlying substance of the acquisitions and report on the entire transaction.

BM
9/27/12