

Verne, B. Michael

From: [REDACTED]
Sent: Friday, October 12, 2012 2:44 PM
To: Verne, B. Michael
Subject: Valuation Separate UPEs Quick Question

Mike,
Am I reading this correctly?

1. A acquires 50% of B from X and 50% of B from Y.
2. At the same time A acquires 33.3% of C from X, Y and Z.
3. In the aggregate A will hold 100% of B and 100% of C.
4. Because C is its own UPE the value of C does not need to be aggregated with the value of B.

In my transaction:

1. Buyer will acquire 100% of the membership interest in A, B, C and D from the Acquired Person as well as a 49% membership interest in E.
2. At the same time buyer will acquire 51% of the membership interest in E from E's ultimate parent entity (not the Acquired Person).
3. The aggregate value of E is less than \$68.2 million.

Questions

4. The value of the transaction would be the acquisition price of A, B, C and D if determined. If not determined the fair market value of A, B, C, and D. It would not include the value of E. Is that correct?
5. If the value of E was greater than \$68.2 million there would be potentially 2 HSR filings. One for the acquisition of A, B, C, and D and a separate HSR for the acquisition of E. Is that correct?

Many thanks and hope you enjoy the weekend!

Best regards,
[REDACTED]

*Agree -
BV
10/15/12*

<http://www.ftc.gov/bc/hsr/informal/opinions/1205004.htm>

Rule(s):	801.10
Staff:	Michael Verne
Response / Comments:	05/11/2012 – Agree. K Walsh concurs.
	Original Image File

From: (redacted)
Sent: Friday, May 11, 2012 10:04 AM
To: Verne, B. Michael
Subject: HSR Size-of-Transaction - CONFIDENTIAL

Mike,

Hoping you can confirm some analysis for us:

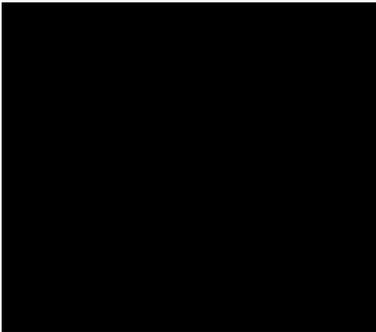
Our client, Company A, plans to acquire 100% of the interests in Company B and Company C. Company B is 100% owned by Person X and Person Y in equal, 50% shares. Company C is

owned by Person X, Person Y and Person Z, also in equal shares (with no Person with the right to 50% or more of profits or assets upon dissolution).

Taking each acquisition separately, it is our understanding that, to the extent the size-of-person and size-of-transaction tests are met, Company A would have to file HSR for acquisition of 100% of Company B, with both Person X and Person Y filing as acquired UPEs (Le., both "control" Company B). It is also our understanding that, to the extent the size-of-person and size-of-transaction tests are met, Company A would have to file HSR for acquisition of 100% of Company C, with Company C filing as its own UPE.

The issue arises where neither transaction, taken separately, would meet the HSR size-of-transaction test. Our question is whether the fact that Persons X and Y (the UPEs of Company B) are also selling their interests in Company C would somehow require that the value of the interests being sold by X and Y in Company B would need to be aggregated with those being sold by X and Y in Company C. Our reading of Opinion 142 in the Premerger Notification Practice Manual (Fourth Edition) suggests that the common holdings of multiple seller UPEs need not be aggregated, and the acquisitions of Company B and Company C would not be aggregated for the size-of-transaction analysis (Le., these represent two distinct transaction because they are purchases from distinct UPEs). Do you agree?

Please let us know if you need any clarification or additional information.



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For more information please go to [redacted]

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