

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, January 08, 2013 4:15 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Project Trinity (HSR)

Mike:

Hope all is well. Tom and I are working on a potential JV formation transaction. We have two HSR questions for you and would be grateful if you could please confirm that our answers are correct out of an abundance of caution:

1. The NewCo JV itself will be a Luxembourg S.a.r.L., which will elect to be treated as a partnership for U.S. tax purposes. The board will consist of employees of the ultimate parent of the partners of the NewCo JV or controlled subsidiaries of the ultimate parents of the partners, but in order to establish that NewCo JV is a resident of Luxembourg for tax purposes, there will be residents of Luxembourg on the board. Some of these Luxembourg residents may be outsiders, i.e., not employed by any of the ultimate parents of the NewCo JV partners or their controlled subsidiaries, although that has not yet been determined. Is it still the FTC's view that we may look at the S.a.r.L as a partnership for HSR Act purposes? – We did not find a recent informal opinion on point.
2. As part of the multi-step JV formation transaction, two of the three Newco JV partners will contribute an existing JV to the NewCo JV. On the following day, these partners will also contribute wholly-owned subsidiaries that hold plants leased to their existing JV to NewCo JV. Simultaneously, the third Newco JV partner will contribute a wholly-owned subsidiary that holds its plants to Newco JV. The various steps will only happen if the NEWCO JV closes. I assume, but wanted to confirm, that we can analyze the HSR reportability of this transaction as a single JV formation rather than analyze each step separately.

Thank you, Mike.

[REDACTED]

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1. We have historically treated S.a.r.L. entities as non-corporate.
2. We are fine with these multiple steps all being treated as part of the JV formation

BN
11/9/13
KW concerns