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802.2(c)

Verne, B. Michael

From: [Redacted]
Sent: Wednesday, June 18, 2014 3:57 PM
To: Verne, B. Michael
Cc: Walsh, Kathryn E.
Subject: HSR Questions

Hi,

I understand from another law firm that the PNO agreed that a transaction as described below was exempt and I want to confirm that it is still the current view.

A foreign government agency acquired 100% of the stock of a US Co and the transaction was deemed not reportable because a foreign government agency acquired the company. The foreign government made the acquisition through a wholly owned corporate acquisition vehicle. Neither the foreign government nor its acquisition vehicle were considered an "entity" as defined by the HSR rules. Is this still the current view?

In my situation, the buyer is a Chinese agency that is making an acquisition through a corporation as well.

Separately, with regard to our prior discussion that the unproductive real property exemption applies to the acquisition of the US located real property that is being developed for a copper mine, my question is whether your view changes if you know that in a different transaction (but same issuer and property to be sold as the current one discussed) a different buyer did submit HSR filings and received early termination previously.

I would think the view does not change because the analysis does not change and exemptions are an option not mandatory "requirements" such the as size of person and size of transaction tests are under the HSR rules. As such, the fact that one party files, but may not have had to file, does not change the analysis (e.g., for the investment exemption—a truly passive investor can file to acquire 5% of an issuer's voting securities with a value that exceeds \$75.9M, and choose not to take advantage of Section 802.9).

Thanks very much and I'm available to discuss.

Regards,

[Redacted Signature]

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We think this lost something in translation from the other law firm. Unless the corporation is also a government agency, it would be an entity and its own UPE in a potentially reportable acquisition of the US Co.

We don't think that it affects the analysis of the current acquisition if someone else filed in error on the same acquisition and we didn't catch it. We disagree with your characterization of exemptions being "optional". If we see something that is exempt being filed for, the filer can't choose not to use the exemption, especially something straightforward (e.g., intraperson). There is more latitude in an exemption that is subjective like the solely for purpose of investment exemption. Only the acquiring person truly knows its intent and if it is in a grey area, they may choose to file out of an abundance of caution, even if they may have potentially been able to rely on the exemption.

BW
6/19/14

FW CONCENS