

801-90

From: [REDACTED]  
To: FTC.SERIOUS("mverne@ftc.gov")  
Date: Tue, Oct 3, 2000 10:06 AM  
Subject: HSR Inquiry

Could you let me know about the following situation? Thanks.

Company A will buy certain production assets from Company B. Independent appraisers are valuing the assets, but they are expected to

supply agreement with Company B and Company B's parent, giving Company A the right to sell to Company B and B's parent's all of the latter's requirements (a requirements contract). As an inducement to enter into the Supply Agreement, Company A will be paying to Company B consideration. This consideration will be in the \$32-35 million range.

They call this consideration a "prebate."

assuming that the structure is not motivated by HSR evasion concerns, and thus there is no 801.90 issue, there should be no reportability. It should not be reportable because there is only one set of assets being purchased and the FMV of those assets will be less than \$15 million. The supply agreement is not an asset, and thus consideration for the purchase of the assets and the prebate for the supply agreement (essentially a financing device) should not be aggregated.

What do you think? I can be reached at [REDACTED]

Voice: [REDACTED]  
Fax: [REDACTED]

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AGREE -

B. Michael Verne  
10/4/00