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1. Add an example to §801.11 to illustrate that application of §801.11(e) will not obviate the need for filing if the transaction is valued in excess of $200 million.

2. The example following §802.6 should be updated, as the Civil Aeronautics Board no longer exists.

3. New § 802.21(b) reference to "1978 thresholds" is an undefined and potentially confusing term. You might consider something like "thresholds under the previous statute".

4. Rule 803.20(c) has an exception for second requests issued to acquired persons in tender offers, but needs a similar exception for second requests issued to acquired persons in bankruptcy proceedings.

5. In Item 1(h) of the form, insert an introductory phrase that says: "If the person listed in response to Item 1(g) is located outside the United States,". . . . A similar insertion in the Form Instructions for this item would be helpful.

6. In the Form Instructions immediately preceding Item 1, insert into the paragraph on early terminations a sentence that says: "A request for early termination made by either the acquiring or the acquired person will be considered by the agencies."

7. In the Form Instructions, the Note following Item 4(a), relating to incorporation by reference, should either be repeated following Item 4(b) or amended to refer to both Item 4(a) and Item 4(b).

8. I personally think that the removal of livestock from the exemption in §802.2(g) is a bit silly, but there does not appear to be any justification for also removing inventory of crops, animal feed, or fertilizer, or for removing structures from the exemption. One could argue whether livestock should be viewed as incidental to the ownership of land and possibly of substantive antitrust interest under an unusual set of circumstances, but the other "associated agricultural assets" do not seem to have any such potential.

9. The proposed re-definition of total sales in the most recent year for proposed rules §802.50 and §802.51, to include both the sales from the most recently completed calendar or fiscal year, and sales since that time, up to 60 days prior to filing, seems difficult to justify. First, the issue which that change seeks to address arises in both domestic and foreign transactions, and no similar change is proposed for dealing with the domestic transactions. Second, it is often more difficult to obtain current information on sales of foreign entities than it is for domestic entities.

Third, the rule that is designed to require a determination of annual sales does so for a period longer than one year, and indeed for a period that can range up to two years. This in effect artificially inflates the size of the entity (or its U.S. sales) in a way that is hard to justify.

If the problem that the provision is aiming to solve is that the sales of some entities grow rapidly, a provision could be considered that ties the exemption to the previous year's sales, or to present year-to-date sales if larger. Thus, year-to-date sales become relevant only at the point in time that they exceed the sales of the previous year. That approach would still suffer from inconsistency with other provisions in the rules, and from the difficulty of obtaining current information from foreign entities, but it would at least not double count.

10. The term "foreign assets" used in the new draft rules should be defined (perhaps with a parenthetical inserted directly into the rule). Such a provision might read: "The acquisition of assets located outside the United States ('foreign assets') shall be exempt. . . ."

11. A reference to §802.50(b) should appear somewhere in §801.15.

12. You might consider amending §803.7 so that a notification expires two years (rather than the current one year) after the expiration of the resulting waiting period. The reason for this change is that the statutory amendments, the higher filing fees and the larger number of notification thresholds may tend to induce acquiring persons to file for higher notification thresholds, which they intend to reach at a future date. This should be encouraged. Rule 802.21 gives a filing party a five-year period within which to make additional acquisitions that do not cross a threshold for which a filing has not been made. These transactions are apparently deemed unlikely to raise substantive antitrust concerns. Allowing filing parties more than one year in which to cross thresholds for which relatively recent filings have been made would seem similarly devoid of likely antitrust concern.

I would be happy to discuss any of these suggestions.

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