

HSR Valuation

- 1. Size-of-transaction test (SOT)
 - A. Size-of-person test inapplicable if SOT is greater than \$200 million
 - B. Not reportable if SOT is \$50 million or less

HSR Valuation

- 2. Determining the correct filing threshold and filing fee

Valuation thresholds

at \$50 million

\$100 million

\$500 million

25% worth \$1 billion

HSR Valuation

- 3. Valuation is required for application of numerous exemptions
 - §802.3 carbon-based mineral reserves
 - §802.4 acquisitions of voting securities of entity holding exempt assets
 - §§802.50-802.51 foreign commerce exemptions
 - Valuing the non-exempt portion of many partially exempt transactions

Three Valuation Procedures



- 1. Market Price
- 2. Acquisition Price
- 3. Fair Market Value

Market Price

- Applies only to publicly traded securities
- If there's no agreement:
 - Lowest closing quotation in 45 days prior to filing (if filing is required)
 - Lowest closing quotation in 45 days prior to closing (if filing is not required)
- If there is an agreement:
 - Same rule but lowest closing quotation not earlier than the day before the date of the agreement

Acquisition Price

- Total amount of consideration paid to seller
- Includes assumed liabilities in an asset deal
- Can't discount future payments
- Parties may agree upon acquisition price
- If they don't, buyer's good faith estimate
- If buyer can't estimate, acquisition price is not "determined"

Fair Market Value

- Applies to all asset deals, some v/s deals
- Buyer's board of directors or its delegee
- Good faith requirement
- As of any date within 60 days of closing
- Any reasonable valuation methodology
- But ignore liens, mortgages, encumbrances

Separate valuation procedures for



Asset Acquisitions

Voting Securities Acquisitions

Valuing Asset Acquisitions



- Always determine Fair Market Value
- But use Acquisition Price if “determined” and greater than Fair Market Value

Valuing Acquisitions of Publicly Traded Securities



- Always determine Market Price
- But use Acquisition Price if “determined” and greater than Market Price

Valuing Acquisitions of Voting Securities not Publicly Traded



- Use Acquisition Price if “determined”
- Otherwise use Fair Market Value