801.40
802.1
802.30(c)

Verne, B. Michael

From: [redacted]
Sent: Wednesday, June 25, 2014 10:39 AM
To: Verne, B. Michael; Walsh, Kathryn E.
Subject: Application of the HSR Act to Proposed Acquisition and Entity Formation

Dear Mike and Kate,

This letter is written to confirm our understanding regarding the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), to the proposed transactions described below.

The Acquisition

LP1, LP2, LP3 and LP4 (each individually, a "Buyer" and collectively, "Buyers") are each their own separate ultimate parent entities. Buyers propose to acquire, in the aggregate, approximately 87.9% of the voting securities of A, 96.8% of the non-corporate interests of B and 100% of the non-corporate interests of C (A, B and C each individually, a "Target Company" and collectively, the "Target Companies") in one transaction (the voting securities or non-corporate interests of the Target Companies, as applicable, collectively, the "Interests").

A is a corporation controlled by X. B and C are limited liability companies that are each their own separate ultimate parent entities. No Buyer currently holds any Interests in any Target Company. The current holders of Interests in the Target Companies, including X (each individually, a "Seller" and collectively, the "Sellers"), will retain the remaining Interests in each Target Company.

The proposed aggregate purchase price for the Interests to be acquired is approximately $103.0 million, $400,000 of which will be used at closing to pay in full all outstanding indebtedness of the Target Companies owed to a third party lender. The purchase price is subject to a working capital, an indebtedness and a cash balance adjustment. In addition, Sellers could receive an earnout payment in the amount of up to $15.0 million based on the post-closing performance of the Target Companies. Buyers, in good faith, have determined that the amount of the earnout payment that is likely to be paid to Sellers is $15.0 million. As a consequence, the aggregate consideration to be received by Sellers for the Interests is approximately $117.6 million ($103.0 million purchase price less $400,000 (bank debt paid at closing) plus $15.0 million (estimated earnout payment)). Buyers, in good faith, have estimated that there would be no purchase price adjustment based on working capital, indebtedness or cash balance.

The parties have allocated the aggregate dollar value of the consideration (approximately $117.6 million) among the Target Companies as follows:

Target Company	Dollar Value
A	$84,775,350
B	$29,824,650
C	$3,000,000
Total	$117,600,000

The dollar value of the Interests in each Target Company proposed to be acquired by each Buyer is set forth below. LP1 will acquire a greater than 50% interest in each Target Company. Each other Buyer will acquire less than a 10% interest in each Target Company:

Buyer	Dollar Value		
	A	B	C
LP1	$67,591,387	$23,779,193	$2,391,900
LP2	$9,147,260	$3,218,080	$323,700
LP3	$4,781,330	$1,682,110	$169,200
LP4	$3,255,373	$1,145,267	$115,200
Total	$84,775,350	$29,824,650	$3,000,000

Acquisition of Voting Securities of A

A is a corporation. No Buyer will acquire or hold voting securities of A valued in excess of $75.9 million. As a result, the acquisition of the voting securities of A is not reportable.

Acquisition of Non-Corporate Interests of B and C

B and C are limited liability companies. LP1 will acquire non-corporate interests that confer control of both B and C; however, the value of the non-corporate interests in each of B and C acquired by LP1 is less than $75.9 million. As a result, the acquisition of the non-corporate interests in B and C is not reportable.

Formation of Holdco

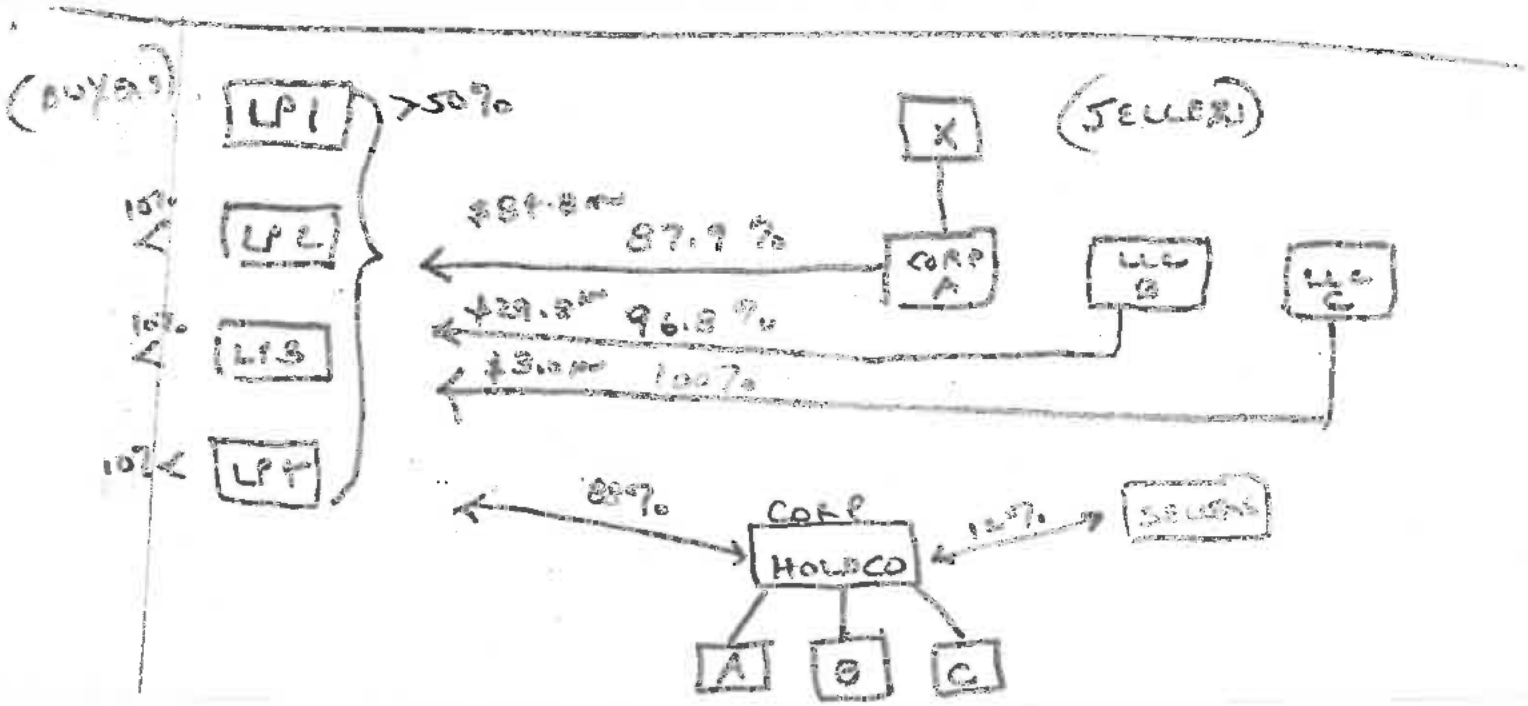
Immediately following the closing of the acquisition, Buyers and Sellers will contribute all of the outstanding Interests in the Target Companies held by them to Holdco, a newly-formed corporation. The value of the Interests contributed by Buyers is approximately $117.6 million (as discussed above). The value of the Interests contributed by Sellers is approximately $10 million. The aggregate value of all of the Interests to be contributed to Holdco is approximately $127.6 million. In exchange for their respective contributions, Buyers will hold, in the aggregate, approximately 88.0% of the voting securities of Holdco and Sellers will hold, in the aggregate, approximately 12.0% of the voting securities of Holdco. Simultaneously with its formation, Holdco will enter into a $30.0 million secured loan arrangement with unaffiliated banks. No Buyer or Seller will guarantee the bank loan.

LP1 will contribute Interests having an aggregate value of approximately $89.5 million and the other Buyers and Sellers will contribute Interests having an aggregate value of approximately $38.1 million. LP1 will acquire voting securities of Holdco having a value in excess of $75.9 million; however, pursuant to Rule 802.30(c) the Interests contributed by LP1 to Holdco upon its formation are exempt from the reporting requirements of the Act. As to LP1, Holdco holds approximately $38.1 million in non-exempt assets ($127.6 million - $89.5 million) reflecting the aggregate value of the Interests contributed by the other Buyers and Sellers to Holdco upon its formation. Therefore, LP1's acquisition of the voting securities of Holdco is exempt under Rule 802.4. As to all other persons contributing to the formation of Holdco, Holdco holds approximately $89.5 million in non-exempt assets (represented by the value of the Interests contributed by LP1); however, no other Buyer or Seller individually will acquire voting securities of Holdco valued in excess of $75.9 million. As a result, the formation of Holdco is not reportable. ←

Please let me know as soon as possible if you agree with the conclusions discussed above or if we have misunderstood or misinterpreted prior staff informal interpretive advice on the application of the Act to the proposed transactions.

Thank you for your cooperation and assistance.

[redacted]


(BUYERS)
LP1
>50%
LP2
LP3
LP4
15%
10%
10%
X
(SELLERS)
CORP A
87.1 %
96.8 %
100%
CORP HOLDCO
A
B
C

We agree that nothing prior to the formation of Holdco is reportable. As to the formation, because LP1 is contributing more than 50% of the interests in A, B and C, it is deemed to be contributing all of the assets of A, B and C to the formation. So, using 802.4 and 802.30(c), LP1's acquisition of Holdco voting securities is exempt and no other Buyer or Seller is acquiring more than $75.9 million in Holdco voting securities. This is an interesting one, because usually in a JV formation, the formers are contributing assets, not voting securities or non-corporate interests, so the 802.4/802.30(c) analysis is much more intuitive.

BM
6/25/14

KW CONCURS