

Verne, B. Michael

801.90

From: [REDACTED]
Sent: Monday, May 02, 2005 2:07 PM
To: Verne, B. Michael
Subject: Permitted Conduct?

Mike:
Please confirm whether the following is permitted conduct under the HSR, and not impermissible "avoidance" conduct:

1. Co. A is negotiating to acquire assets of Co. B., for an "acquisition price" of \$45MM + specific Assumed Liabilities (bank debt and trade payables).
2. Such an "acquisition price" would be greater than the fair market value of the assets.
3. With respect to Co. A's negotiation of which Assumed Liabilities (trade payables) it will assume, Co. A is permitted to closely analyze the amount of the Assumed Liabilities with an intent to keep such figure, when combined with the cash paid for the assets, below \$53.1MM, and thereby not have a reportable transaction. This is not re-shaping a reportable transaction, rather determining which liabilities it will assume so as to not reach a filing threshold.

I think that covers it, but feel free to call if you need more information.

Kind regards

[REDACTED]

AGREE - This is OK.
B. Michael
5/2/05

