

Verne, B. Michael

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From: [REDACTED]
Sent: Thursday, March 01, 2007 3:35 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Applicability Scenario



scan.pdf (95 KB)

Mike -

I'm hoping you can confirm our understanding of a transaction as to HSR non-reportability due to failure to meet the size of the transaction test (assume for purposes of this question that the other two jurisdictional thresholds are met). I think we are on firm ground, but I'd appreciate your views.

Buyer, Buyer Subsidiary and Target Company have entered into an Agreement and Plan of Merger in which Buyer Subsidiary merges into Target Company with Target Company as the surviving corporation. Pre-merger Target Company shareholders receive all cash. Post-merger, Target Company is a wholly-owned subsidiary of Buyer.

Merger consideration is based on a formula with a \$130 million base purchase price, subject to various reductions, including existing Borrowed Money Debt of about \$50 million. Therefore, on a net basis, Target Company's shareholders receive about \$80 million in proceeds.

Of that \$80 million in proceeds, however, \$55 million is funded through a sale leaseback transaction. Immediately following the merger (by this I mean a millisecond later), \$55 million worth of real estate owned by Target Company and its wholly-owned subsidiaries is sold to an unrelated third party Real Estate Purchaser and Target Company and its wholly-owned subsidiaries immediately lease that real estate back from the third party Real Estate Purchaser.

The attached addresses a similar sale-leaseback situation where essentially the sale-leaseback purchase price is also not counted in calculating the size of the transaction. The attached was done when the size of the transaction test was still \$15 million.

In the present deal, this would mean that at the end of the day we have a \$25 million purchase of voting securities (\$130 - \$50 existing debt - \$55 million sale - leaseback proceeds) and it's a non-reportable transaction for failure to meet the size of the transaction test.

Please let me know if this is correct or advise and I will call you about this if there are any questions. I'm not in my office today; Minnesota is in the midst of a pretty heavy snowfall. Thanks, Mike.

AGREE - This is
NON-REPORTABLE
3/1/07
Buehler