

Verne, B. Michael

From: [REDACTED]
Sent: Monday, June 25, 2007 11:53 AM
To: Verne, B. Michael
Subject: Item 4(c)

Hi Mike.

We need your assistance in determining whether certain types of documents are responsive to Item 4(c). We represent A, an entity that will be acquired by B. The parties have been talking for months so we have a large volume of documents to review for 4c. Please assume that all of the documents described below were drafted in connection with the transaction and can be found in the files of officers and/or directors of A. Please also assume that the only potential 4(c) content in each of the documents described below is the content described below.

- (1) A document that simply states that A should buy X and Y and then ask for more money from B when B buys A. (Note that X and Y compete with A but the document does not discuss this.) **NO**
- (2) A document in which A states that if news of its NDA with B leaked, A's prospective customers in the market could postpone making a decision about A and A's employees could wonder about their future. **NO**
- (3) A document between A and B in which B states that it is not sure how long the HSR due diligence and HSR filings would take, but wants to make sure they are done right. **NO**
- (4) A due diligence request list from B to A states the following. Please provide revenue by specific channels and then the question lists the channels such as internet, etc... Another question states please provide revenues by sales type and then lists the sales types based on type of end user. Answers to these questions are not provided in the document. **NO**
- (5) Another due diligence list from B to A requests that A provide details of its recent customer losses and then the question lists as examples specific customers lost by A. No answers are provided in the document. **NO**
- (6) A director of A sends an e-mail in which he describes competition in general terms in A's industry and then notes that his general observations are intended to be a guide as A deliberates on its future and negotiates with prospective purchasers. Neither B nor any other prospective purchaser is named. However, the e-mail was sent during the time in which A was considering doing a deal with B. **YES**
- (7) Documents that discuss only the likelihood and timing of HSR approval. **NO**
- (8) A spreadsheet prepared as part of due diligence shows A's contractual commitments for product enhancements in the future. **NO**
- (9) Would executed employee non-compete agreements be responsive? **NO**
- (10) Could disclosure schedules be responsive if they contain information on when certain of A's customer contracts terminate in the future or when A's product enhancements will be introduced in the future? **NO**
- (11) We understand that transcribed voice mail messages could possibly be 4(c) responsive. We assume this is not the case if the voice mail messages have not been transcribed. Is this correct? **YES**

Thanks for your help Mike.

Best regards,

Bruce
6/26/07

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