

801-10
802-4

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, June 27, 2007 9:47 AM
To: Verne, B. Michael
Subject: HSR Questions

Mr. Verne,

I would like to confirm our analysis on two unrelated transactions.

Transaction 1

Limited Partnership A ("A") is acquiring 100% of the voting stock of Target Corporation ("Company") through: (i) the acquisition of 15% of the voting stock of Company directly from management individuals; and (ii) the acquisition of 100% of the membership interest of Limited Liability Company B ("B") which in turn directly holds 85% of the voting stock of Company. B does not hold any other assets other than its interest in Company. Assume the size-of-person thresholds are met. For HSR purposes, the UPE of Company is a natural person who holds 100% of the membership interest of B.

A is paying a total of \$33 million cash for the securities to be acquired in this acquisition of Company. A is also paying off \$100 million of Company's debt.

Question: Do we include the \$100 million debt payoff in calculating the size of transaction?

Although we are directly acquiring both voting stock of Company and B's LLC membership interest, since B's only asset is Company, can we look through B directly to Company and treat this as an acquisition of voting stock in which case we do not include the debt?

Transaction 2

Adult siblings A, B, C and D each directly own: (i) 25% of Corporation X ("X"); 25% of Corporation Y ("Y"); and 25% of Corporation Z ("Z"). Therefore X, Y and Z are each their own UPEs for HSR purposes.

Newco LLC ("Newco") is being formed by X, Y, and Z each contributing all of their assets in exchange for membership interest in Newco. As a result, Z will hold 70% of the membership interest of Newco (based on the greater value of the assets it contributed) and X and Y will hold the remaining 30%. X, Y, and Z are still each held 25% by A, B, C and D.

Newco was formed for the purpose of forming a JV with another entity. The formation of the JV is HSR reportable and HSR notifications will be submitted for the JV formation.

Question: Is the formation of Newco exempt under 7a(c)(10) and/or 802.30?

Although Z acquired a controlling interest in Newco, this is really just a re-organization and consolidation

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of the assets of X, Y and Z, which remain held in the same proportions by A, B, C and D, for ease of entering into the JV.

Please let me know if you need additional information on either of these transactions. Your assistance is appreciated.

Thank you,

[REDACTED]

[REDACTED]

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[REDACTED]

Transaction 1 - Do not include the debt. The size-of-transaction is \$33 MM.

Transaction 2 - The transaction would not be exempt under (c)(10) or 802.30. Z's acquisition of 70% of Newco LLC may be exempt under 802.4. Z can exclude the value of its assets in the 802.4 analysis, so Z would only be looking at the value of the assets contributed by X and Y in determining if the Newco has non-exempt assets valued at \$59.6 million or greater. Any exempt assets contributed by X and Y (e.g. cash, cash equivalents, etc. can also be excluded).

BW
6/27/07