

801.1(b)

Verne, B. Michael

From: [REDACTED]
Sent: Friday, June 29, 2007 11:50 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Hart-Scott-Rodino Antitrust Improvements Act - UPE Question

Mike

Thank you for taking the time to speak with me and [REDACTED] last week. I am writing to confirm the advice you provided. The factual background that we discussed is set forth below as is the analysis.

Background

An existing limited liability company ("LLC A"), currently has a corporate ultimate parent entity that has the right to receive 50% or more of the profits and 50% or more of the assets upon dissolution ("Owner X"). A limited partnership is contemplating making an investment in LLC A ("Owner Y") and as a result of such investment, the equity ownership of LLC A would be reorganized such that Owner X would continue to own preferred membership interests in LLC A entitling it to receive upon the dissolution of LLC A or from future profits, the first \$39.4 million plus an 8% accruing dividend on \$31.4 million of such amount. Owner Y, as a result of such investment, would receive preferred membership interests entitling it to the next \$27.0 million plus an 8% accruing dividend on such amount upon the dissolution of LLC A or from future profits, and would also receive common membership interests that would entitle it to share in profits and distributions of assets upon dissolution after the satisfaction of the payments in respect of the preferred membership interests. The common membership interests to be held by Owner Y would entitle it to 50% or more of the profits and 50% or more of the assets upon dissolution at such time as the amounts in respect of the preferred membership interests have been satisfied.

LLC A is anticipating acquiring assets from an unrelated business ("Target T") for an amount in excess of \$59.8 million and less than \$239.2 million (the "Acquisition"). Owner Y's investment in LLC A would occur immediately before the consummation of the Acquisition. We believe that irrespective of the identity of the ultimate parent entity of LLC A, both LLC A and Target T will satisfy the size of party test under the HSR Act.

Analysis

Issue: Is Owner X the ultimate parent entity of LLC A for purposes of the notification to be filed in respect of the Acquisition?

Based on informal staff opinion 0705023, dated May 30, 2007, we discussed with you that, to determine the ultimate parent entity of LLC A on a prospective basis giving effect to Owner Y's investment in LLC A and to analyze the equity ownership of LLC A as of the time of the Acquisition, the appropriate methodology to determine "control" pursuant to Rule 801.1(b) is to use LLC A's most recently regularly prepared balance sheet. Using that balance sheet, we should determine which person, if any, would have a right to receive 50% or more of the profits or 50% or more of the assets upon dissolution of LLC A based on the equity ownership that will exist immediately after Owner Y's investment in LLC A and at the time of the Acquisition. The regularly prepared balance sheet will be for a date that

6/29/2007

2

