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Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, October 17, 2007 4:56 PM
To: Verne, B. Michael
Subject: HSR inquiry

CONFIDENTIAL

Dear Mike –

This is to follow up my voice-mail of this afternoon. Buyer's counsel contacted you with a preliminary inquiry last week. Since then we have learned more about the facts, and they are forth below. Based on these facts, have I stated the HSR analysis correctly? As always I will be grateful for your help.

Company A is going to acquire control of two companies, Company B and Company C. We are confident that an HSR filing will be required with respect to Company C. As part of that filing, Company A and Company C will submit under Item 4(c) an Offering Memorandum, which addresses both Company B and Company C. Our question is whether we also need to make an additional HSR filing with respect to Company B. The value of the Company B transaction may fall below the relevant threshold. The financial structure of these transactions has been arranged for bona fide business reasons, and is not in any way a device to avoid an HSR filing.

The facts and my analysis with respect to Company B are as follows. (The numbers below are round numbers that illustrate the issues, and they are not intended to state the precise figures for the transaction.)

1. Company A will form Newco as a wholly-owned sub.
2. Newco will merge with Company B, and the surviving entity will have Company A as its parent. Thus for HSR purposes it will be deemed that Company A is acquiring voting securities of Company B.
3. Company A will pay \$50 million to the current shareholders of Company B.
4. Company B has \$15 million in preexisting debt, and at closing Company A will pay off the \$15 million in debt.

- From No. 88 and No. 114 of the Premerger Notification Manual I have understood that this \$15 million is not counted toward the value of the transaction in an acquisition of voting securities. Thus the value of the transaction is still \$50 million.

5(a). At the same closing, Newco will borrow \$10 million, and Newco will use that money to redeem some of the existing interests of current shareholders of Company B.

- From recent informal interpretations and staff phone calls I have understood that the borrowing and redemption is not included in the value of the transaction. Thus the value of the transaction is still \$50 million for HSR purposes.

5(b). As an alternative, it could be that Company A itself would borrow the money or would guarantee repayment by Newco.

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- In that event the \$10 million would be included in the value of the transaction, and in that event the value of the transaction would be \$60 million.

Have I stated the analysis correctly based on these facts? Please send me a reply e-mail, or else please call me at the number below if that would be more convenient for you.

Thank you very much and best regards,

[REDACTED]

AGREE -
JM
10/18/07

[REDACTED]

[REDACTED]

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