

Verne, B. Michael

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From: [REDACTED]  
Sent: Monday, February 04, 2008 2:40 PM  
To: Verne, B. Michael  
Subject: Confirming Email re Sale of Book of Insurance Business

2AC(1)

Mike:

Thanks as always for your helpful insight. The following memorializes the relevant aspects of our discussion on January 17, 2008 concerning the sale of a book of insurance business, and your informal interpretation concerning the application of the HSR Act and its rules and regulations. I would be grateful if you could reconfirm, or revise your view, as appropriate.

1. A multinational insurance and financial services firm intends to have a U.S. based subsidiary (the "Current Carrier") sell a book of insurance business to an entity that constitutes a separate HSR "person" (the "Acquiring Carrier") via a renewal rights transaction.
2. Current Carrier, through a network of independent agents, presently underwrites insurance for a particular segment of customers, offering a number of different lines (the "Subject Business"). Under the Current Carrier's existing arrangements with independent agents, upon expiration of existing policies, the independent agents may arrange for renewal policies written on Current Carrier paper.
3. Current Carrier and Acquiring Carrier would enter into a renewal rights agreement that would sell to Acquiring Carrier "renewal rights" relating to the Subject Business generally comprised of (i) the rights, if any, that Current Carrier has to renew policies written under the Subject Business and (ii) the rights of Current Carrier under certain of its contracts with the independent agents through which such insurance policies are written. In addition, Current Carrier would sell to Acquiring Carrier the goodwill associated with the renewal rights, as well as the right to access certain customer, agent and other information necessary for Acquiring Carrier to commence writing renewed insurance policies on its own paper. Pursuant to that agreement and agreements ancillary thereto, when the existing policies lapse (and assuming that Acquiring Carrier has all necessary approvals and arrangements with the independent agents and regulators in place to underwrite insurance policies under the Subject Business), the independent agents would arrange for the renewals to be written on Acquiring Carrier paper (renewals are expected to begin within 18 to 24 months after the closing of the transfer of renewal rights to Acquiring Carrier).
4. In order to accelerate the transfer of the economic risks and benefits associated with the Subject Business to Acquiring Carrier, Acquiring Carrier would enter into an indemnity reinsurance contract with Current Carrier whereby Acquiring Carrier would reinsure the existing policies written on Current Carrier paper. Under this contract, among other things, Current Carrier will transfer to Acquiring Carrier the unearned premium reserves related to the reinsured insurance policies and will receive a ceding commission that is based on such unearned premium reserves.
5. While the entire consideration is contingent upon the profits generated by the reinsured business and renewals that are actually written on Acquiring Carrier paper, and will be paid on an annual "earn-out" basis over the five year period commencing on January 1, 2011, you should assume for purposes of this analysis that the "renewal rights" and associated assets are valued in excess of the minimum HSR notification threshold.
6. Certain aspects of the management of the Subject Business, as well as certain related operational assets, will also be transferred, but from one subsidiary within the Current Carrier's "person" to a different subsidiary within the Current Carrier's "person" and for consideration that is not in excess of \$59.8 million.
7. There is precedent in this industry for insurance carriers to sell a book of business by structuring the transfer of the book of business as a sale of renewal rights.

2/4/2008

It is our understanding that from an HSR standpoint, the entry of the indemnity reinsurance contract will not trigger HSR obligations. The PNO takes the position that entering into an indemnity reinsurance contract is not an acquisition of assets, voting securities or noncorporate interests for purposes of the HSR Act. Thus, the HSR Act cannot be implicated by the entry of an indemnity reinsurance contract. In our call, you confirmed that this remains the PNO's position. Please advise if I have accurately reflected your view.

It was not clear to us whether Acquiring Carrier's acquisition of the "renewal rights" and associated assets such as goodwill and access to customer information relating to the Subject Business would constitute a transfer of assets" for purposes of the HSR Act. While you stated that this would be viewed as an asset transfer that could potentially trigger a notification obligation under the HSR Act, you stated that an exemption would be available pursuant to 16 CFR Section 802.1 as a transfer of goods or realty in the ordinary course of business. Please advise if I have accurately reflected your view.

Thanks in advance, and kind regards,

[Redacted]

[Redacted]

AGREE  
BL  
2/4/08

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