

801.11

**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Tuesday, May 26, 2009 2:54 PM  
**To:** Verne, B. Michael  
**Subject:** Question regarding incidental expenses under §801.11(e)

Once more, thanks for being so cooperative with this logistical confusion!

**From:** [REDACTED]  
**Sent:** Tuesday, May 19, 2009 4:23 PM  
**To:** 'bmverne@ftc.gov'  
**Subject:** Question regarding incidental expenses under §801.11(e)

I am writing to memorialize our recent conversation regarding your conclusion that the transaction described below is not reportable under the HSR Act by virtue of 16 CFR § 801.11 (e).

As we discussed, two newly-formed LLCs, each without a regularly prepared balance sheet, and each its own ultimate parent entity, are purchasing a group of motor fuel retail outlets for cash consideration of \$135 million. They have also executed a contract with the seller, whereby the seller will provide motor fuel for these outlets for at least ten years. That supply contract requires that the purchasers obtain a \$13.5 million letter of credit to secure payment for the motor fuel. Therefore, the LLCs will have \$148.5 million in cash at the closing. Post-closing their assets will consist of the outlets and a \$13.5 million deposit at the institution issuing the letter of credit.

The outlets would not be purchased unless the purchasers had the benefit of the supply agreement and the supply agreement is conditioned on the purchase of the outlets. Therefore, the supply agreement and the purchase agreement are inextricably intertwined.

You advised that for the purpose of determining whether either LLC satisfies the size-of-person, its assets should not include the \$13.5 million deposit under the letter of credit, because that deposit would be considered an expense incidental to the acquisition, which can be excluded for size-of-person purposes by virtue of 16 CFR § 801.11(e).

If this does not reflect your conclusion then please let me know at your earliest convenience. This transaction is scheduled to close as early as next week.

Thank you.

AGREE -  
*Be*  
 5/26/09