

801-10

Verne, B. Michael

From: [REDACTED]
Sent: Monday, April 26, 2010 9:06 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Question

Mike,

I am working on a transaction with [REDACTED] (both copied on this message) and we're hoping you can confirm our HSR analysis.

The target company is structured as a holding company ("Holdco") that holds 100% of the voting securities of an operating company ("Opco"). Buyers are 6 different entities that together currently hold all the subordinated debt (the "Notes") of Opco, and a small percentage (<5% aggregate total) of the voting securities of Holdco. The 6 buyers' percentage holdings are fixed with respect to one another; they hold the same percentage of Opco Notes and the same relative percentage of Holdco voting securities. Their acquisitions, as described below, will be fixed in the same percentages. Among the buyers, one ("BuyerA") represents approximately 69%. BuyerA is not within the same person as any of the other buyers.

The transaction is essentially a restructuring and recapitalization by the target to avoid insolvency, with the result that the buyers will together hold 95%-plus of the voting securities of Holdco.

The transaction is structured in steps as follows:

1. BuyerA will form a wholly-owned subsidiary ("Mergerco") and will capitalize it with all the Opco Notes that it holds, plus \$32.5 million in cash.

2. Mergerco will merge with and into Holdco, with Holdco surviving. As a result of that merger:

(a) The existing common shares of Holdco will be converted into a very small amount of Holdco New Common shares. As a result of this conversion, the current majority shareholders of Holdco will end up holding a total of \$1.5 million of New Common, and the buyers will end up holding \$74,500 in shares of New Common (of which BuyerA will hold \$51,500)

(b) BuyerA's Notes will be exchanged for \$27.3 million in shares of New Common.

(c) BuyerA will acquire \$15.2 million in additional shares of New Common, and \$17.3 million in Preference shares (which are voting securities) of Holdco.

3. Immediately following the merger of Mergerco into Holdco, the other 5 buyers will exchange their Opco Notes for an aggregate total of \$12.1 million in shares of New Common of Holdco. They will also acquire, for cash, an aggregate total of \$6.8 million in additional shares of New Common, and \$7.7 million in Preference shares of Holdco.

Note that the values specified above, including the conversion values for the existing common and the Notes, will be specified in the relevant agreements.

Thus as a result of the merger:

(i) BuyerA will hold a total of \$59.9 million in voting securities of Holdco: \$42.6 million in shares of New Common (\$51,500 exchanged for old common, \$27.3 million exchanged for Notes, and \$15.2 million newly

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purchased for cash) and \$17.3 million in Preferred.

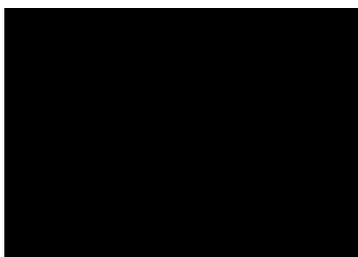
(ii) The other 5 buyers will hold, in the aggregate, a total of \$26.6 million in voting securities of Holdco: \$18.9 million in shares of New Common (\$22,900 exchanged for old common, \$12.1 million exchanged for Notes, and \$6.8 million newly purchased for cash) and \$7.7 million in Preferred.

(iii) The current (pre-closing) shareholders of Holdco, other than the buyers, will hold a total of \$1.5 million in voting securities of New Common (all exchanged for old common).

We believe that this transaction is not reportable under the HSR Act because the size of transaction threshold is not met -- no person will hold, as a result of the transaction, more than \$63.4 million in voting securities of Holdco.

Do you agree?

Thanks for your help,



AGREE
Be
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