

802.4

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, June 16, 2010 2:26 PM
To: Verne, B. Michael
Subject: HSR Analysis

Mike, I was wondering if you could see below and let me know your thoughts.

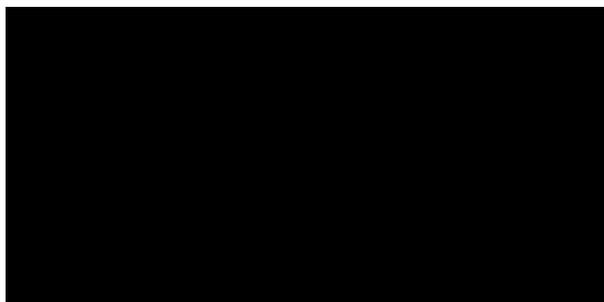
Many thanks in advance.

Description of Transaction:

1. Foreign issuer ("Buyer") will acquire from U.S. entity ("Parent") (i) 100% of the noncorporate interests in the wholly-owned domestic subsidiary of Parent ("US Sub"), and (ii) 100% of the equity in 4 wholly-owned foreign subsidiaries of Parent (collectively, the "Foreign Subs").
2. Purchase Price is app. \$128.8mm, subject to deductions for payoff of Parent's debt/costs/expenses, less an amount equal to the deemed value of app. 20.7% of o/s shares of Buyer (which shares shall be delivered to Parent's UPE in lieu of cash value thereof at closing).
3. Acquired Person is the UPE of Parent, also a U.S. issuer. Acquiring Person is the UPE of Buyer, a foreign issuer.

Preliminary HSR Analysis:

1. 802.4 provides that the acquisition of voting securities of an issuer or noncorporate interests in an entity whose assets, together with those of all entities it controls, consist or will consist of assets whose acquisition is exempt pursuant to...this part 802...is exempt if the acquired issuer or unincorporated entity and all entities it controls do not hold non-exempt assets with an aggregate FMV of more than \$63.4mm.
2. 802.50 provides that the acquisition of assets located outside of the US are exempt unless the foreign assets the Acquiring Person would hold as a result of the transaction generated sales in or into the US exceeding \$63.4mm during the Acquired Person's most recent fiscal year.
3. Any assets of the Foreign Subs located outside of the US and which did not generate sales in or into the US exceeding \$63.4mm during the most recent fiscal year can be deducted from the analysis pursuant to 802.4.
4. **After such deduction**, the question becomes whether Parent, **and all entities it controls**, have remaining assets (for this analysis, we will assume they are not otherwise exempt under HSR - i.e. "non-exempt") with an aggregate FMV of more than \$63.4mm. If the answer is "no," then no HSR filing should be required based upon 802.4 and 802.50.



Preliminary HSR Analysis

3. You look at all assets located outside of the US, whether held by the foreign subs or the US sub

4. You are not looking at the remaining assets held by Parent and all entities it controls – you are only looking at the remaining assets of the five subs. Parent's assets outside of the five subs are irrelevant to the analysis because you are not acquiring Parent

BR
4/16/10