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Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, February 16, 2011 12:38 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR question

Mike,

I am working on the following transaction:

"A" proposes to acquire "B" for more than \$2 billion in cash. B is its own ultimate parent entity.

At the closing, and simultaneously with the acquisition of B, three of B's existing businesses (which will likely be transferred to separate subsidiaries of B prior to the closing) ("X," "Y" and "Z") will be spun-off (i.e., sold) to members of B's current management (most likely to an entity formed by management to make the acquisition ("E")), for approximately \$500 MM as follows:

100% of X will be sold to E. A will supply low cost financing to E for the purchase of X.

70% of Y will be sold to E. A will capitalize Y with working capital of approximately \$37.5 MM.

85% of Z will be sold to E. A will capitalize Z with working capital of approximately \$37.5 MM and forgive Z's note in the amount of \$20 MM.

Assuming that the relevant thresholds are met, and that an HSR filing will be made by A for the acquisition of B, will an HSR filing be required in connection with the spin-off of X, Y and Z to E?

If the answer is yes, how should we determine who should file as the acquired person in connection with the spin-off transaction? Am I correct that the answer turns on whether beneficial ownership of B passes to A prior to the spin-off of X,Y and Z?

Thank you,
[REDACTED]

[REDACTED]

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Pursuant to U.S. Treasury Department Circular 230, unless we expressly state otherwise, any tax advice contained in this communication (including any attachments) was not intended

Yes – the acquisition by E of X, Y and Z is separately reportable. You are correct that if the spinoff occurs pre-acquisition by A, B is the acquired UPE. If the spinoff occurs post acquisition, A is the acquired UPE.

BW
2/16/11