

Verne, B. Michael

801.10

From: [Redacted]
Sent: Tuesday, April 19, 2011 3:14 PM
To: Verne, B. Michael
Cc: [Redacted]
Subject: HSR question

Mike,

I have a question I hope you can answer:

Company A will acquire 100% of the LLC interests of B LLC. Assume the size of the parties meets the HSR threshold.

Company A now holds a warrant to purchase 35% of the interests of B LLC for \$100 but holds no LLC interests presently.

Pursuant to a commercial agreement between Company A and B LLC, Company A has the right to purchase all of the interests of B LLC. Under the commercial agreement and ancillary agreements, the acquisition price for 100% of B LLC's interests will be \$100 per customer of B at the time of closing, less 35% to account for Company A's warrant. As a result, Company A will pay less than \$66 million for 100% of B LLC.

Please confirm or correct the following analysis:

Under 801.10(d), the value of the LLC interests to be acquired is the acquisition price of the interests (if determined); if undetermined, the fair market value. The acquisition price here is \$100 per customer, less 35%. This calculation will result in a specific dollar figure that all parties will agree is the price. Therefore, the acquisition price is determined. Because the acquisition price is determined and because Company A does not presently hold LLC interests in Company B, the fair market value of the LLC interests to be acquired is irrelevant to the determination of transaction value. The transaction value will be the acquisition price (\$65 * number of customers).

Thanks, Mike. Please give me a call with any questions.

Best regards,

AGREE
BM
4/20/11

[Redacted]

[Redacted]

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