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Verne, B. Michael

From: [REDACTED]  
Sent: Friday, September 09, 2011 3:09 PM  
To: Verne, B. Michael  
Subject: HSR Reportability Question

Mike:

Please confirm that the following proposed transaction would not require a filing under the Hart-Scott-Rodino Act and/or let me know if you have any questions or comments.

Company A currently holds 100% of the LLC membership interests ("interests") in LLC 1, and approximately 30% of the interests in LLC 2 and LLC 3, respectively. Company A has entered into a preliminary agreement to sell to Buyer all of its interests in these LLCs and the parties have agreed on the following evaluations:

- LLC 1        \$12 million
- LLC 2        \$17 million
- LLC 3        \$200 million (all figures are approximate)

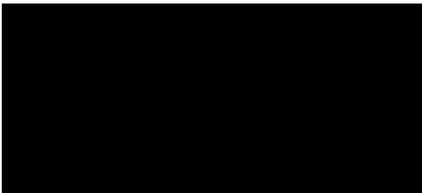
The sales of LLC 1 and LLC 2 are conditioned on the sale of LLC 3, and Buyer currently does not hold any interests in LLCs 1, 2 or 3.

The acquisition of interests in LLCs is governed under the HSR Act in the first instance by § 801.10(d), which provides that only the acquisition of 50% or more of the interests in an unincorporated entity is reportable. The acquisition of 100% of the interests in LLC 1 is potentially reportable, but the value does not meet the current minimum size of transaction. The acquisitions of the interests in LLC 2 and 3 are not reportable because the Buyer will not hold 50% or more of their respective interests as a result of the transaction.

Moreover, the amounts paid for LLC 2 and LLC 3 should not be aggregated with the amount paid for LLC 1. § 801.14(c) of the Rules provides that the value of all noncorporate interests of the acquired person which the acquiring person would hold as a result of the acquisition be determined by reference to § 801.13(c). Section 801.13(c)(1) provides that previously acquired noncorporate interest in the *same unincorporated entity* is to be aggregated with the newly acquired interests. Buyer has no previously acquired interests in any of the LLCs.

§ 801.13(c)(2) provides that the acquisition of noncorporate interests which does not confer control of the unincorporated entity is not aggregated with any other assets or voting securities which have been and are currently acquired from the same acquired person. Thus, the consideration paid for the interests in LLC 2 and LLC 3 would not be aggregated with the consideration paid for LLC 1, and the minimum size of transaction would not be met.

I look forward to hearing from you.



AGREE  
BW  
9/12/11