

ITEM 4(c)

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Thursday, December 29, 2011 11:43 AM  
**To:** Verne, B. Michael  
**Subject:** question re 4(c) and 4(d) documents

Dear Mike,

I am working on a transaction for which numerous documents were prepared that largely, if not solely, go to valuation of the deal. I am trying to determine which of these documents might rise to 4(c) or 4(d).

As background, my client currently holds a minority stake in target, a privately-held company. It has increased its stake in the past and is now increasing again. My client does not have a minority or majority investment in any competing businesses. The target has a few primary competitors. I have numerous documents that analyze one or more of the target's primary competitors for the purpose of valuing the target's shares. The competitors were analyzed in such depth due to the fact that target is private and the competitors are not, and thus the parties were determining a fair per-share price for this transaction based off share prices, EBITDA multiples, and projections of growth of the competitors.

I would appreciate it if you would tell me whether any of the categories of documents listed below might qualify as Item 4(c) or 4(d). Due to the guidance contained in the article by Marian Bruno, Brian Mohr and Bruce Prager (Locating and Identifying Item 4(c) documents, Antitrust, Spring 2002), I want to be certain I'm making the right call. In particular, I am looking at example 21 which states that a bankers book listing comparable transactions for the purpose of valuation would not be 4(c), but that a list of competitors would qualify as 4(c).

1. Documents comparing target to one or more of its competitors (without identifying them as competitors) in terms of share price, financial results and possible valuation, without any discussion of 4(c) criteria such as market shares, etc. I am wondering if the mere listing of two competitors' names and certain financial information, without identifying them as competitors, could become 4(c) due to example 21 of the Marian Bruno article.
2. Documents comparing target to one or more of its competitors (without identifying them as competitors) in terms of share price, financial results and possible valuation, and including discussion of 4(c) criteria such as market shares, etc. as pertains to the competitor(s) only
3. Documents analyzing one or more of target's competitors on a stand alone basis, without identifying the company as a competitor of target, in terms of non-4(c) criteria only such as financial results.
4. Documents analyzing one or more of target's competitors on a stand alone basis, without identifying the company as a competitor of target, including a discussion of 4(c) criteria. Example: an analysis of a competitor's recent quarterly earnings update, including excerpts from various analyst's reports that discuss the market climate for the competitor and its potential for growth as well as independent analysis of the competitor's potential for growth.

I will be submitting several other documents (over 50, most likely) that identify the competitors and clearly have 4(c) or 4(d) content.

If this would be easier decided by a phone conversation, I'm happy to do that and provide more detail.

Many thanks,

[REDACTED]

2 & 4 ARE RESPONSIVE.  
K. WALSH COMMENTS.  
BN  
1/3/12