

Verne, B. Michael

801.10

From: [REDACTED]
Sent: Thursday, March 17, 2005 1:01 PM
To: Verne, B. Michael
Subject: HSR Question re Size of Transaction

Dear Mr. Verne:

This relates to our telephone conversation this morning concerning the size of transaction issues in the transaction described below.

A is the buyer. The members of B, an LLC, are selling 100% of the equity interests in B to A. B has a sister LLC, C, which owns certain intellectual property. D owns a majority of both B & C and is the UPE on the seller side. Both A and D have revenues and/or assets in excess of \$10M but below \$100M. Thus, the size of person test is not satisfied here and the deal is not reportable unless the size of transaction exceeds \$200M, or \$212M under the new regs.

A will purchase all of the equity interests of B for approximately \$140M, half cash and half stock of A. Prior to closing, C will give B a 15 year exclusive license on its on the intellectual property with royalties to be paid C based on future sales of products developed with the licensed intellectual property. Thus, A will get this license when it buys B and in fact it is central to the purchase transaction. A will then pay royalties to C based on future sales of the products developed with the licensed intellectual property.

The issue I raised was whether, in determining size of transaction, the present value of the future royalty payments from A to C had to be added to the \$140M purchase price which is also the FMV of the assets purchased. It did not seem to me that it should be added since the value of the intellectual property license was factored in to determine the purchase price, and thus the size of the transaction is the FMV of the assets purchased from B excluding the future royalty payments based on sales of the patented product.

You confirmed that the future royalty payments did not needed to be added to the FMV (or the enterprise value you mentioned under the new LLC regs) to determine the size of transaction. Since that makes the size of the transaction well below \$200M, the transaction is not reportable under the HSR if the size of person test is not met, as appears to be the case here. Please confirm that the foregoing correctly reflects your conclusions and analysis.

Since the transaction is time sensitive, we would appreciate an early response. An email to me is fine. Thank you very much.

AGNEE -
B. Michael
2/23/05

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