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Verne, B. Michael

From: [redacted]
Sent: Monday, March 13, 2006 11:30 AM
To: Verne, B. Michael
Subject: HSR Restructuring Question

Mike--

I would like your confirmation on the following scenario.

Parent owns all of the voting securities of Sub. Sub is a debtor-in-possession in bankruptcy. Parent is not in bankruptcy, and has no material assets other than its interest in Sub. Acquirer proposes to acquire all of the stock or assets of Sub under a court approved plan. Consideration will include cash and the conversion of an outstanding note of Sub owned by Acquirer into equity, that together exceed the $50 million (AA) threshold. Upon consummation of the plan, Acquirer will acquire ownership of both Parent (even though Parent is not a debtor in the case) and Sub (or the successor entity that exits bankruptcy).

The acquisition of Sub will be subject to the requirements of the HSR Act. Could you confirm that the acquisition of Parent will not?

Here is my analysis. By HSR convention, Parent is not deemed to be the ultimate parent entity of Sub, its subsidiary in bankruptcy. Accordingly, the acquisitions of Parent and Sub must be separately analyzed for the purposes of the Act. Because Parent is not the ultimate parent of Sub, the assets of Sub should not be attributed to Parent. Moreover, pre-consummation, the stock of Sub in the hands of Parent is essentially worthless. Finally, if any allocation of the purchase price were to be made between Parent and Sub, the allocation to Parent would have to be nominal. The acquisition of Parent should therefore not be reportable.

Many thanks.

[redacted]

Agree -
B
3/13/06

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