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Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, April 24, 2007 3:29 PM
To: Verne, B. Michael
Subject: complex acquisition



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Dear Mike,

I am analyzing a rather complex transaction by a private equity company, and I'd appreciate your opinion as to whether I've properly determined HSR reportability. I've attached a diagram of the basic structure.

Two groups of investing partnerships will acquire a Target ("Group 1" and "Group 2"). (Though the two groups of investing entities are affiliated with the same private equity company, the two groups are not under common control for HSR purposes.) They will acquire Target through a non-US Newco. Newco's voting securities will be held 50-50 by Group 1 and Group 2. However, Group 1 consists of 6 separate limited partnerships not under common control for HSR purposes, and Group 2 consists of only 1 limited partnership at present ("Group 2 LP"), and will still consist of only 1 LP at acquisition.

It seems to me that Group 2 LP will be the UPE of Newco, by virtue of holding 50% of the voting securities of Newco. None of the 6 limited partnerships that constitute Group 1 will hold 50% or more of the voting securities of Newco individually, thus, Newco has one UPE only and the HSR filing for the acquisition of Target will be made by Group 2 LP.

A related question arises in regard to a non-corporate entity currently owned by the limited partnerships of Group 1. Back in early 2006, the 6 limited partnerships that make up Group 1 acquired a non-corporate target ("2006 Non-Corporate Target"). At the time, no HSR filing was required as none of the partnerships or individual investors in the partnerships gained control of 2006 Non-Corporate Target by virtue of having the right to 50% or more of the profits or 50% or more of the assets upon dissolution of 2006 Non-Corporate Target. However, now the private equity company wishes to transfer 2006 Non-Corporate Target to become a subsidiary of Newco. It seems to me that this is a reportable event, as Group 2 LP will now control 2006 Non-Corporate Target, whereas before it did not.

Thus, it seems two filings are required here, both by Group 2 LP -- one for the acquisition of the present target, and another for the acquisition of control over 2006 Non-Corporate Target.

I'd appreciate it if you'd let me know if you agree with my initial analysis, and whether I seem to have provided all the facts necessary for a determination of HSR reportability.

Best regards,

[REDACTED]

[REDACTED]

AGREE
BV
4/24/07

