

801.2(d)

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, April 26, 2007 12:18 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Question

Mike,

Thanks for taking my call yesterday. I wanted to summarize our discussion.

As we discussed yesterday, LLC 1 and LLC 2 are combining to create NewCo LLC. LLC 1 is comprised of 12 members with no UPE because no one has an ownership interest of 50% or more. LLC 2 has 4 members with one entity having a 50% ownership interest. The entity with the 50% ownership interest is the UPE of LLC 2.

The structure of the transaction is as follows:

Step 1:

The current members of LLC 1 and LLC 2 will contribute their respective equity interests in LLC 1 and LLC 2 to Newco, LLC, a Delaware limited liability company ("Newco"), in exchange for equity interests in Newco. LLC 1 and LLC 2 will continue as separate legal entities.

Step 2:

Immediately after closing, the former members of LLC 1 will contribute their Newco equity interests to a holding company ("New LLC 1") and the former members of LLC 2 (other than the UPE) will contribute their Newco equity interests to a holding company ("New LLC 2"). So, the members of NewCo LLC will be New LLC 1, New LLC 2, and the UPE of LLC 2. New LLC 1 will own 50% of NewCo, New LLC 2 will own 25% of Newco, and UPE of LLC 2 will own 25% of NewCo.

Step 3:


Sometime within 6 months to a year after closing, LLC 1 and LLC 2 will merge into Newco, or otherwise dissolve, transferring their assets to Newco.

The value of LLC 1 and LLC 2 are approximately the same, but one may be higher than the other.

From our conversation, I believe that you agreed that the transaction to be classified as a consolidation. We also agreed that LLC 1 and LLC 2 are acquiring and acquired persons. LLC 1 is a reporting person and the UPE of LLC 2 is a reporting person. NewCo is not an acquired person. The value of the transaction is the greater in value of LLC 1 or LLC 2, which will be determined in good faith by the managers of LLC 1 and LLC 2. There is only one filing fee based on the value of the greater of LLC 1 and LLC 2. The filing fee is not related to the value of NewCo. The formation of the holding companies immediately after closing does not trigger another HSR notification. The transfer of assets from LLC 1 and LLC 2 to Newco, which is planned to occur about 6 months following the initial closing does not require another filing because it is an intraperson transaction.

Please let me know if my understanding of our discussion is correct.

Thanks,

Agree

4/26/07

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