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Verne, B. Michael

From: [redacted]
Sent: Tuesday, May 08, 2007 9:03 AM
To: Verne, B. Michael
Cc: [redacted]
Subject: HSR Question on Voting Securities Value

Mike,

We have a factual scenario that we wanted to run by you. It is our understanding that the following transaction would be deemed below the size of transaction threshold under the HSR Act. This is the question we called you about last night, but thought it might be helpful for us to email the facts to you.

Company A, which is its own ultimate parent entity ("UPE") plans to acquire 100% of the shares of Company B stock via a merger of Newco into Company B. Newco will be a wholly-owned subsidiary of Company A. Company B is also its own UPE. The consideration to be paid by Company A for the merger will consist of cash of approximately $150 million.

Of the total consideration, approximately $30 million in cash will be used to repay debt that is owed to third parties by Company B.

Company B has two classes of stock: Class A and Class B. Only the Class A stock carries the present right to vote for the election of directors of Company B. There are 8,333 shares of Class A voting stock outstanding and 75,000 shares of Class B non-voting stock outstanding. The holders of the Class A and Class B shares will receive the same per share consideration pursuant to the merger. Moreover, the holders of Class A and Class B shares are the same seven individuals, who together own all Company B shares in the ratio of 10% voting stock (Class A) and 90% nonvoting stock (Class B).

In addition, there is an earn-out provision under the merger agreement, pursuant to which if a certain consent is received from a third party, additional consideration will be paid by Company A of up to $30 million post-closing. This payment would be payable to the shareholders of Class A and Class B stock as a post-closing adjustment and increase in the purchase price per share: again, the holders of the Class A and Class B shares will receive the same per share consideration.

Thus, the maximum total consideration to be paid by Company A to the shareholders of Company B in connection with the merger after debts owed to third parties have been repaid is up to $150 million, of which up to $15 million will be payable to the holders of voting securities in respect of such voting securities. The remainder of the consideration will go to the same 7 shareholders as consideration for Class B non-voting shares. We understand from the staff's informal HSR interpretations that if the purchase price per share to be paid per share of voting securities is clear in the operative agreement, that the transaction price allocable to the voting securities will be deemed determined, and the transaction will not meet the size of transaction test.

Thank you very much for your assistance with this question.

Agreed
5/8/07

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