

Verne, B. Michael

From: [REDACTED]
Sent: Friday, February 08, 2008 3:56 PM
To: Verne, B. Michael
Subject: HSR: subsequent filing issues

Hi Mike --

A is the UPE of Old Holdco, which itself owns an operating business. Old Holdco has an agreement with Target (its own UPE and a \$10 million person, as adjusted) to buy 100% of Target for \$110 million. A and Target have made an HSR filing for that transaction, and the waiting period has expired. Old Holdco has not closed its acquisition of Target.

The structure of the transaction likely will change. Here are the possibilities:

-- Possibility 1: Prior to closing, the ownership structure of Old Holdco will change, such that Old Holdco at the closing of the acquisition of Target will be its own UPE. I believe that no new HSR filing would be required, but please confirm.

-- Possibility 2: B is a relatively new entity with no regularly prepared financials. Last year B acquired 45% of a corporation that is worth over \$500 million and for which it paid over \$200 million. That investment is B's only asset. Under this Possibility, B would create Newco, which would assume the rights of Old Holdco to purchase Target. I assume that B is a \$100 million person, as adjusted, and that because there is a new UPE, a new HSR filing would be required. Please confirm, though.

If Possibility 2 comes to pass, there are two additional possibilities:

-- Possibility 3: Old Holdco (either still controlled by A or now its own UPE) would acquire Target (or Newco, which has as its only holding Target). Would a new HSR filing be required? Or would the HSR filing made previously by A and Target cover that transaction? (Assume Old Holdco, if its own UPE, would be a \$100 million person, as adjusted).

-- Possibility 4: Newco (owned by B), which now owns Target, acquires Old Holdco (or its operating business). I assume that transaction would require a new HSR filing.

I hope that these facts are clear. Please let me know if you have any questions.

As always, many thanks.

[REDACTED]

Possibility 1: I agree - no new filing is required.

Possibility 2: I agree - new acquiring UPE B would require a new filing.

Possibility 3: No new filing required

Possibility 4: New filing is required

BN
2/11/08