

801-10

CONFIDENTIAL

February 21, 2008

VIA ELECTRONIC MAIL

B. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Avenue, NW
Washington, DC 20580

Re: HSR Treatment of Liabilities

Dear Mike:

In follow-up to our conversation on February 19, 2008, I am writing to confirm my understanding that the proposed acquisition described below is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act").


Proposed Transaction

Pursuant to a proposed transaction, Buyer intends to acquire 100% of the limited partnership interests of Acquired LP from Sellers. As a part of this transaction Buyer also will acquire 100% of the limited liability company interests of Acquired LLC which is the general partner of Acquired LP and holds a minority interest in Acquired LP. For the LP and LLC interests, there is a cash purchase price above \$50 million but less than the HSR size of the transaction test. However, Buyer also will be assuming debt of and paying off debt of Acquired LP as a part of the transaction. If the value of the debt being assumed and paid off is included in the HSR valuation, the valuation of the transaction would be above the HSR size of the transaction test. The debt of Acquired LP that Buyer is paying off is debt owed to one or more of the Sellers. With regard to the additional debt of Acquired LP owed to one or more third party that Buyer is assuming, Sellers are being released from a guaranty of that debt as a part of the proposed transaction.

Conclusions

You confirmed the following:

- (1) The proposed transaction is not HSR reportable as its value is below the HSR size of the transaction test;
- (2) Acquisitions conferring control of a limited partnership, limited liability company or other noncorporate entity such as in the proposed transaction are treated as comparable to those involving



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voting securities with respect to assumed liabilities -- the value of the assumed liabilities is not included in the acquisition price for HSR purposes;

(3) Debt of Acquired LP is not included in the HSR valuation of Acquired LP whether Buyer assumes the debt of Acquired LP or pays off that debt before closing, at closing or following closing;

(4) Debt of Acquired LP is not included in the HSR valuation whether some or all of that debt being paid off or assumed by Buyer is debt owed to the Sellers of Acquired LP or third parties; and

(5) Debt of Acquired LP is not included in the HSR valuation even if Sellers of Acquired LP are released from their guaranty of any debt of Acquired LP as a part of the transaction.

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Sincerely,



AGREE
BV
2/21/08