

8039

**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Monday, April 21, 2008 10:23 PM  
**To:** Verne, B. Michael  
**Subject:** Circumstances under which new filing fee is required

Hi Mike --

Issue 1: A agrees to acquire B for \$99 million. A and B file their HSR forms. Before the waiting period has expired, A agrees to increase the purchase price to \$120 million. I assume that no additional notification is required, but please confirm.

Issue 2: Same facts as above, but before the waiting period has expired, A agrees to increase the purchase price to \$140 million. Does A need to re-file and pay an additional \$80,000? Is the answer the same if the waiting period has already expired?

(Informal Opinion No. 01021001, in the form of an email dated 02/01/2002, indicates that it might touch on this issue, but all I could see on the website is the email, with a note at the bottom stating "See Attached Response." I could not see the attached response or any notes concerning the response.)


Many thanks,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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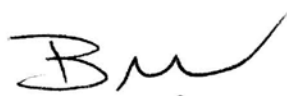
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Issue 1 - no action required

Issue 2 - additional fee would be required for either scenario, but waiting period would not be restarted.

We think this situation can be differentiated from a transaction where a good faith determination of the value was made, but the post-closing adjustments take the actual price over a new filing fee threshold. In that case no action would be required. In your scenario, the parties have mutually agreed to a new value that takes it over a new filing fee threshold, so the additional fee would be required, whether the waiting period has expired or not.

  
4/22/08

M. BAUNO, K. BERG CONCUR