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May 15, 2008

Mr. R. Michael Verne
Premerger Notification Office
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Size-of-Transaction Test and Transaction Expenses and Debt Obligations

This letter serves to confirm our conversation on Wednesday, May 14, 2008, concerning certain issues relating to the treatment of seller's transaction expenses and debt repayment in the context of the size-of-transaction test under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") and rules and regulations thereunder.

Based on our call, you confirmed that it is the Federal Trade Commission Premerger Notification Office's ("PNO") view that the seller's transaction expenses should always be subtracted from the "acquisition price" in computing the value of the transaction for purposes of § 801.10, in any asset or voting securities acquisition, and in any acquisition of non-corporate interests that confers control. You also confirmed that the pay-off of debt owed to third parties by the seller or the parent company of the seller should be excluded from the "acquisition price" in computing the value of the transaction for purposes of § 801.10, in a non-corporate acquisition that confers control, or an acquisition of voting securities regardless of whether control is acquired, regardless of whether the debt is paid off by the buyer or the seller.

I. Treatment of Transaction Expenses

I noted on the call that based on prior Informal Staff Opinion 0607023 of the PNO[1] in an acquisition of 100% of the outstanding voting securities of Target, amounts paid by the buyer (presumably to Target Parent) for the reimbursement of transaction expenses incurred by Target and Target Parent, such as attorney and investment banker fees, are not included in the size-of-transaction for HSR purposes. Further, based on prior Informal Staff Opinion 0602021[2], transaction expenses of Target that are paid by the buyer (presumably to the vendors providing those services) are not included in the size-of-transaction test in an acquisition of 100% of the non-corporate interests.

[1] http://www.ftc.gov/bc/hsr/informal/opinions/0607023.htm.

[2] http://www.ftc.gov/bc/hsr/informal/opinions/0602021.htm.

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Based on these interpretations, I noted that there seems to be a general rule that transaction expenses of Target that are paid by the buyer or that are being reimbursed to the seller by the buyer do not need to be included in the size-of-transaction in an acquisition of non-corporate interests or an acquisition of voting securities. I noted that this general rule would seem to apply as well with respect to asset acquisitions. You agreed that the PNO views this as a general rule, however, you noted that the rule applies (i) in all voting securities acquisitions, regardless of whether control is acquired, (ii) in non-corporate acquisitions that confer control (which are the only kind now reportable), and (iii) in asset acquisitions.

I noted that what these interpretations do not address is whether there is a general rule that the seller's transaction expenses are not included in calculating the size-of-transaction test, regardless of whether the buyer reimburses the seller for these expenses, or the seller pays these expenses from the deal proceeds. You stated on the call that the PNO views it as a general rule that the seller's transaction expenses are not included in the size-of-transaction test, regardless of whether the buyer reimburses the seller for these expenses, or the seller pays these expenses from the deal proceeds. You confirmed that this rule applies (i) in all voting securities acquisitions, regardless of whether control is acquired, (ii) in non-corporate acquisitions that confer control (which are the only kind now reportable), and (iii) in asset acquisitions.

I noted that Informal Staff Opinion Number 0512016[3] states that the rationale behind this rule is that a buyer's agreement to effectively reimburse sellers for these expenses may be treated as an agreement ancillary to the agreement to acquire the stock and noncorporate interests, and presumably assets. You agreed, and stated on the call that the PNO's rationale for this rule is that the transaction expenses are not viewed as consideration that is being paid to the shareholders, but are merely the cost of getting the deal done.

II. Treatment of Repayment of Debt

It is the position of the PNO, based on the ABA Section of Antitrust Law, Premerger Notification Manual, Interpretation No. 88 (4th Ed. 2007), that in an acquisition of voting securities, amounts paid by the buyer for the pay-off of debt owed by the target are not included in the size-of-transaction. It does not matter if the debt is owed by the target company to third parties or to the parent company of the target. Based on Informal Staff Opinion 0503005,[4] the rule is the same in an acquisition of non-corporate interests that confer control. What the interpretations do not

[3] http://www.ftc.gov/bc/hsr/informal/opinions/0512016.htm.

[4] http://www.ftc.gov/bc/hsr/informal/opinions/0503005.htm.

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address is whether the acquisition price for purposes of § 801.10 should be reduced by any repayment by the seller from the deal proceeds of outstanding debt that the seller owes to third parties, or to the parent company of the seller.

You confirmed that the PNO views it as a general rule that the acquisition price for purposes of § 801.10 in any voting securities acquisition, or in any acquisition of control of a non-corporate entity, should be reduced by any repayment by the seller from the deal proceeds of outstanding debt of the seller that is owed to third parties or that the target owes to its parent company. You further confirmed that this general rule applied even in situations in which the debt in question was guaranteed by the seller's parent or shareholders of the seller's parent.

If you believe that I have in any way misinterpreted our conversation, please let me know immediately.

Sincerely,

[redacted]

Agree
BM
5/16/08