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Verne, B. Michael

From: [Redacted]

Sent: Monday, May 04, 2009 11:41 AM

To: Verne, B. Michael

Subject: HSR Questions

Mike – To confirm our conversation on May 1 regarding the consolidation about which I previously emailed you (email sent 4/17/2009), I understand the consolidation of companies A, B, C and D will be viewed as a series of mergers. Company A is the largest company, with annual net sales or total assets in excess of \$130.3 million; each of companies B, C and D has annual net sales or total assets in excess of \$13 million. Accordingly, the size-of-the-parties test will be met. To determine whether the consolidation meets the size-of-the-transaction test, you indicated we should determine the value of 100% of the membership interests of company B (company A’s stock does not need to be valued). If that value exceeds \$65.2 million, then a filing would need to be made in which company A is both an acquired and an acquiring person, and company B is both an acquired and an acquiring person. Likewise, we also would need to value the acquisition of company C’s assets and company D’s assets. If the value of either transaction exceeds \$65.2 million, then a filing would need to be made for each such transaction exceeding the threshold, with company A filing as both an acquired and an acquiring person, and company C and/or company D filing as both an acquired and an acquiring person. The newly-created entity, Newco, would not need to file as either an acquired or an acquiring person. While multiple filings may be required, pursuant to Section 803.9(b) of the Rules, we understand only one filing fee is required.

In addition, in valuing the secondary acquisitions (acquisitions of Newco stock), we understand that if such stock is ultimately distributed to the shareholders or members, as the case may be, of companies A, B, C and D, regardless of whether company A, B, C or D momentarily holds such stock, that for HSR purposes, we can view the shareholders or members as the acquiring person for HSR purposes.

Please let me know if I have correctly applied the HSR Rules to the facts here. Thanks for your continued assistance.

[Redacted]

AGREE
 B
 5/5/09

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5/5/2009