802.4
802.50

Verne, B. Michael

From: [redacted]
Sent: Wednesday, April 14, 2010 3:05 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: 802.4/802.50 Analysis

Dear Mike,

Thank you for speaking with us earlier. Below is a note summarizing the facts and analysis we discussed.

Buyer will acquire 100% of the voting securities of Target, a U.S. company (whose ultimate parent is a foreign person), for $75 million (the "Proposed Transaction"). Target owns 100% of Foreign Subsidiary, which Buyer will indirectly acquire in the Proposed Transaction. Foreign Subsidiary holds manufacturing assets outside the U.S., and does not have assets in the U.S. or 2009 net sales in or into the U.S. of more than $63.4 million. For purposes of looking at sales in or into the U.S. in 2009, based on prior advice from the PNO, we believe we should use the average exchange rate for 2009 to convert any foreign currency into USD.

Foreign Subsidiary's sales into the U.S. consist of intracompany sales to Target, as well as a small amount of sales directly to third parties in the U.S. Target, whose assets in the U.S. consist of distribution and not manufacturing assets, resells those products bought from Foreign Subsidiary to customers in the U.S., with a small amount of sales to customers in other countries. The Foreign Subsidiary's intracompany sales reflect the transfer price to Target. Based on this informal interpretation, we believe this is the correct approach for calculating sales into the U.S. (as opposed to calculating sales based on the price at which Target resells the products) since this is the price at which Foreign Subsidiary records the sales on its books.

If Target directly and indirectly (through Foreign Subsidiary) holds assets whose acquisition would otherwise be exempt, then we could look to 802.4 to determine whether the Proposed Transaction is exempt from HSR. If, for example, Buyer were to directly acquire the assets of Foreign Subsidiary, the acquisition of those foreign assets would be exempt under 802.50, because Foreign Subsidiary (i.e., the foreign assets) does not have net sales in or into the U.S. of more than $63.4 million.

Under 802.4, if the fair market value of the remaining non-exempt assets held by Target does not exceed $63.4 million, then the Proposed Transaction would be exempt from the HSR Act. However, if the fair market value of the remaining non-exempt assets (i.e., Target's assets excluding those assets held by Foreign Subsidiary and exempt under 802.50) is above $63.4 million, then the whole $75 million Proposed Transaction is reportable.

Please let me know if you agree with the foregoing analysis, or whether you have any questions.

Thank you,
[redacted]

AGREE
B
4/14/10

[redacted]

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