

Verne, B. Michael

801.10

From: [REDACTED]
Sent: Thursday, October 14, 2010 6:18 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Hypothetical Regarding Basis for Non-reportability

Dear Mike,

I am writing to confirm that the proposed transaction described below is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act").

Proposed Transaction

Under a proposed transaction involving a merger, the Buyer will acquire 100% of the shares of Target, a privately held corporation. The shares of Target consist of classes of voting securities (carrying voting rights with respect to the election of directors) and classes of non-voting securities (carrying no such rights). The holders of the voting securities also hold non-voting securities.

The overall payment that Buyer is making for 100% of the issued and outstanding shares of the Target is greater than \$63.4 million (the amount that must be exceeded to meet the HSR Act Size of the Transaction Test). However, most of the total payment will be made for the non-voting securities in Target, and the part of the consideration payable for Target's voting securities will be an amount well below \$63.4 million. There also is consideration being paid for outstanding options and warrants. These options and warrants do not carry voting rights and are not convertible into voting securities.

The proposed transaction and distribution of consideration between voting and non-voting securities have not been structured for purposes related to potential obligations under the HSR Act. Please assume for purposes of this hypothetical that the Size of the Parties Test is met, and that if the Size of the Transaction Test were met that this transaction would be reportable under the HSR Act.

Analysis and Conclusions

Our conclusion is that the proposed transaction described above is not reportable under the HSR Act, because the \$63.4 million Size of the Transaction Test has not been met.

Our understanding is that any consideration for non-voting securities is not included in the HSR valuation, because the acquisition of non-voting securities is HSR exempt regardless of value.

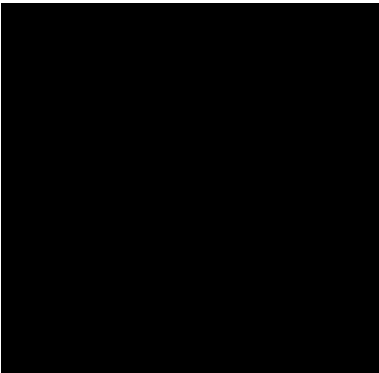
We also understand that the HSR analysis is not impacted by the fact that the majority of the transaction consideration (in excess of \$63.4 million) will be paid to the persons that hold the voting securities of Target by virtue of the fact that they hold as well non-voting securities of Target.

In addition, we understand that any consideration for options and warrants, that do not carry voting rights and that are not convertible into voting securities, would not be included in the valuation for HSR purposes.

We further understand that this transaction will not be regarded as a transaction or device for avoidance under 16 C.F.R. § 801.90.

Please let me know if you agree with the conclusions discussed above. Thank you for your assistance.

Best regards,



AGREE
B.N.
10/14/10

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