

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, March 03, 2011 3:06 PM
To: Verne, B. Michael
Subject: HSR Treatment of LLC Formation Transaction

Dear Mike,

I'm writing to confirm my understanding of the Hart-Scott-Rodino ("HSR") analysis we discussed during our teleconference earlier this afternoon.

As I explained during our conversation, the proposed transaction involves the formation of a new joint venture structured as a limited liability company. "Company A" and "Company B" have executed a Letter of Intent pursuant to which each party will contribute certain assets to a newly formed LLC, while an additional cash purchase will be used to re-balance each party's interest in the LLC such that Company A will own 40% and Company B 60% of the newly formed entity.

More specifically, Company A will create a newly-formed LLC specifically for purposes of this transaction. Upon closing of the proposed transaction, Company A will contribute certain of its businesses to the LLC in exchange for equity. Until such time, the LLC will have no assets. Company B will also contribute certain of its businesses to the LLC in exchange for equity. Immediately prior to B's contribution, Company B will pay Company A cash consideration in exchange for equity interests, such that in the end Company A will own 40% and Company B 60% of the newly created LLC. (By way of background, based on the relative value of the parties' contributions, Company B would only be entitled to approximately 30% of the total equity interest in the LLC.)

While the LOI prescribes these various steps, the subsequent transaction documents will further prescribe that they take place in the order described above and that once Company A has contributed the relevant assets to LLC, all other steps will be unconditional (i.e., will be required under the transaction documents). While these steps could be an instant apart, we understand that in order to obtain the desired tax treatment, the steps will be staged in the order described above, with Company A's and Company B's asset contributions being not more than one day apart.

Based on these facts, you agreed that this transaction is properly viewed as the formation of an unincorporated entity under 16 CFR 801.50. Under that provision, Company B would be deemed an "acquiring person" for HSR purposes by virtue of its acquisition of 50% or more of the equity of the LLC (as in this case, profits will be allocated among the parties based on their respective equity holdings). Assuming that the rest of the applicable thresholds are satisfied, and no exemption applies, Company B would be required to file an HSR notification. However, neither Company A nor the LLC would be deemed to be an acquired person and neither would have a filing obligation.

If you have any questions regarding this matter or if this correspondence does not accurately reflect our discussion, please let me know at your earliest convenience. As always, thank you very much for your time and consideration of this matter.

Best regards,
[REDACTED]

AGREE
B
3/4/11