

801.10

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, June 14, 2011 2:48 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Size-of-Transaction Test and Debt Obligations

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 Debt Obligations

Dear Mike:

This email will confirm our conversation concerning the effect of debt repayment on the size-of-transaction test under the Hart-Scott-Rodino Antitrust Improvements Act (the "HSR Act").

In Informal Staff Opinion 0805010 (the "Informal Opinion"), the Federal Trade Commission Premerger Notification Office ("PNO") concluded that the pay-off of debt owed to third parties by the seller or the parent company of the seller (rather than the entity being acquired) should be excluded from the "acquisition price" in computing the value of the transaction for purposes of Section 801.10 in an acquisition of non-corporate interests that confers control of an unincorporated entity. According to the Informal Opinion, this is true regardless of whether the debt is paid off by the buyer or the seller, regardless of whether the debt of the seller is owed to third parties or owed by the target to its parent company, and regardless of whether the debt is guaranteed by the seller's parent or the shareholders of the seller's parent.

In the proposed transaction we described, the buyer (Company B) intends to acquire all of the equity interests in the target (Company T), a limited liability company. Company T is a direct, wholly-owned subsidiary of its parent company (Company P), a corporation. Company P is the seller in the transaction.

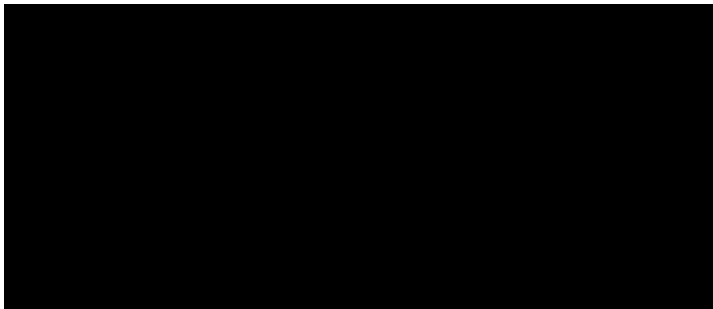
The purchase price to be paid to Company P by Company B exceeds \$66 million. At the closing of the transaction, however, Company P will use a certain amount of the proceeds from the sale to pay down a portion of the debt that is owed by Company P's direct, wholly-owned subsidiary (Company S), a limited liability company and sister company to Company T. We discussed that the debt being repaid is part of a revolving facility, and although repaid, may again be reborrowed, subject to the conditions to advance set forth therein. The debt to be repaid at Closing is guaranteed by both Company T (which will be released from such guaranty at closing) and Company P. The repayment of the debt will be by way of a direct wire from the proceeds of the sale to the third party lender at closing.

After deducting the amount of the debt repayment from the purchase price, the remaining amount will be less than \$66 million.

Because the purchase price for Company T, minus the repayment of debt owed by Company S (which is guaranteed by Company P and Company T), is less than \$66 million, the proposed transaction does not meet the size-of-transaction test under the HSR Act and is therefore not reportable.

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

Sincerely,



AGREE -
BM
6/15/11

Confidentiality Statement

This e-mail message and any attached files are confidential and are intended solely for the use of the addressee(s) named above. This communication may contain material protected by attorney-client, work product, or other privileges. If you are not the intended recipient or person responsible for delivering this confidential communication to the intended recipient, you have received this communication in error, and any review, use, dissemination, forwarding, printing, copying, or other distribution of this e-mail message and any attached files is strictly prohibited. [REDACTED] reserves the right to monitor any communication that is created, received, or sent on its network. If you have received this confidential communication in error, please notify the sender immediately by reply e-mail message and permanently delete the original message.

To reply to our email administrator directly, send an email to [REDACTED]

