Bol.11 1/13/12
JJ Concur.

Clark-Coleman, Sheila

From: [redacted]
Sent: Thursday, January 12, 2012 10:43 AM
To: Clark-Coleman, Sheila
Subject: Follow-up to HSR Inquiry

Dear Sheila:

Thank you so much for your time and assistance the other day. As per your request, I am writing with respect to the follow-up question we preliminarily discussed on the phone on January 10, 2012.

As you may recall, we also spoke back on December 28, 2011 with respect to the following hypothetical transaction. Companies A through M (13 separate companies) are a mix of corporations, partnerships and limited liability companies engaged in or related to a coordinated business operation. The applicable stock/partnership interest/membership interest of each of Companies A through M are owned by the same five adult individuals (Messrs. "U" through "Z") in the same percentages as follows: Mr. "U" owns 20% of each, Mr. "V" owns 20% of each, Mr. "W" owns 20% of each, Mr. "X" owns 20% of each, Mr. "Y" owns 10% of each and Mr. "Z" owns 10% of each. While Messrs. "U", "V", "W" and "X" are all members of the same extended family, they are not spouses or minor children of each other. Mr. "Y" and Mr. "Z" are both members of a different family, but are not spouses or minor children of each other. All of these individually are actively involved in the business operation.

Acquirer O (which has assets in excess of $131,900,000) will, either itself or through a wholly owned subsidiary, simultaneously purchase from Messrs. "U", "V", "W", "X", "Y" and "Z" all of their stock/partnership interests/membership interests in each of Companies A through M (collectively constituting 100% of the equity of Companies A through M) pursuant to a single purchase agreement for an aggregate sum somewhere between $100,000,000 to $150,000,000, but the total price payable for the equity of any one single Company A through M will be less than $66,000,000. In this scenario, you concurred that no one person controlled any of Company A through M (because each individual, Messrs. "U", "V", "W", "X", "Y" and "Z", owned less than 50% of any Company A through M), and therefore (i) each of Company A through M would be treated as its own separate Ultimate Parent Entity (UPE) and (ii) the size of person test and size of transaction test must be separately applied to each of Company A through M based on the price paid for that particular Company's equity. You further concurred that if the purchase price for each of Company A through M's stock/partnership interests/membership interests was less than $66,000,000, then the size of transaction test would not be satisfied for any Company and that no HSR notification filing at all should be required. Correct

As my follow-up to our prior discussion, let's assume the same facts above, but also that Mr. "U", Mr. "V", Mr. "W" and Mr. "X" are parties to a voting agreement relating solely to Company A (a corporation). Under that voting agreement, each of Mr. "U", Mr. "V", Mr. "W" and Mr. "X" agree to vote all of their stock of Company A (a total of 80% of Company A's stock) to elect each of Mr. "U", Mr. "V", Mr. "W" and Mr. "X" as directors of Company A and not to vote to remove them as directors. In addition, each of Mr. "U", Mr. "V", Mr. "W" and Mr. "X" agree, in their capacities as directors, to vote for the others as officers of Company A and not to vote to remove them as officers. As a result, Mr. "U", Mr. "V", Mr. "W" and Mr. "X" will comprise 4 out of 5 (80%) of the members of Company A's board of directors and will each be officers of Company A. There is no contractual agreement or proxy which allows or requires (i) any of such individuals to vote together as shareholders or directors on any other matter (other than amending Company A's by-laws), or (ii) any one individual to vote or direct the other's vote as a shareholder or director, and each may vote on any other matter in their

discretion. In effect, the Company A voting agreement ensures that each of Mr. "U", "V", "W" and "X" collectively constitute a majority (but not all) of Company A's board, but none of them can vote or direct the other's vote on any particular matter as directors or shareholders and no one individual holds or exercises 50% or more of the total voting power. In addition, let's assume that Mr. "U", Mr. "V", Mr. "W" and Mr. "X" are parties to a similar voting agreement for Company B (a limited liability company) where they all agree to elect each other as officers of Company B and not to remove them as officers. In addition, they agree to vote together as members on any amendments to Company B's regulations (analogous to by-laws), but none of them can vote or direct the other's vote on any particular matters (as members or officers) and no one individual holds or exercises 50% or more of such voting power.

It is our view that under these facts, the above described voting agreements would not change the prior conclusions as to the control or UPEs of Companies A through M, would not cause the equity interests of Mr. "U", Mr. "V", Mr. "W" and Mr. "X" to be aggregated in any manner, and would not result in Company A and Company B to be under control of any one individual or other "Person" for HSR purposes. Furthermore, as we understand it, a group of individuals would not be deemed a "company", a "Person" or a single UPE under these circumstances. In support of that position, we direct your attention to Interpretation 43 of the Pre-Merger Notification Practice Manual (4th Edition) and Informal Staff Opinion 0901007 (on Rule 801.11) of Michael Verne dated January 29, 2009. Please advise if you concur.

Correct

Sincerely,

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