

802.4

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, May 22, 2012 9:43 AM  
**To:** Verne, B. Michael; Walsh, Kathryn  
**Subject:** FW: HSR Exemption

Mike and Kate,

I am working on a transaction where the value of target non-exempt assets may be below \$68.2 million, but that in part depends on how I apply the advice you recently gave below . See highlighted text, copied here: Y does not value the non-exempt assets as part of an ongoing business enterprise.

Assume that Buyer is acquiring 100% of target voting shares for \$200 million. In applying 802.4 and looking down at the assets, there are certain exempt assets I ignore – e.g., cash and equivalents. There are few fixed assets, say they total \$20 million (assume book and fair market are the same here). Assume this is an e commerce company as in the below example with current low revenue but lots of “potential.” It is the intangibles that are giving me trouble in the context of your advice. These include the value of customer relationships, brand loyalty, trademarks and supplier relationships. On the books assume these are valued at \$20 million, so that’s \$40 million, less than \$68.2 million. But the test is fair market not book, and on that basis I assume they have a value close to \$160 mm on the simplistic assumption that this is what Buyer is paying \$200 million for. However, if Buyer takes your advice literally, they might conclude that these intangibles have little value because their value is in the context of this ongoing business. Broken up and sold separately outside of the context of this ongoing business, the intangibles likely have very little value, and hence no filing for a \$200 million acquisition.

Please let me know what you think.

Many thanks,

[REDACTED]

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**From:** Verne, B. Michael [<mailto:MVERNE@ftc.gov>]  
**Sent:** Wednesday, April 18, 2012 2:00 PM  
**To:**  
**Subject:** RE: 802.4

I agree with your analysis

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**From:**  
**Sent:** Tuesday, April 17, 2012 8:42 PM  
**To:** Verne, B. Michael  
**Subject:** 802.4

Hi Mike.

I hope you are doing well.

The buyer needs to take into account the intangibles when doing a FMV. The acquisition is of an ongoing business, so these intangibles add value to the business.

BM  
5/22/12  
K. WASH CONCERN